

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subparts A–B [Reserved]

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

Sec.

400.27 Applicability.

400.28 Mutual consent criteria.

400.29–400.36 [Reserved]

Subparts D–E [Reserved]

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

400.45 Applicability.

400.46 Definitions.

400.47 Denial of crop insurance.

400.48 Protection of interests of tenants,
landlords or producers.

400.49–400.50 [Reserved]

Subpart G—Actual Production History

400.51 Availability of actual production his-
tory program.

400.52 Definitions.

400.53 Yield certification and acceptability.

400.54 Submission and accuracy of produc-
tion reports.

400.55 Qualifications for actual production
history coverage program.

400.56 Administrative appeal exhaustion.

400.57 [Reserved]

Subpart H—Information Collection Require- ments Under the Paperwork Reduction Act; OMB Control Numbers

400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

400.90 Definitions.

400.91 Applicability.

400.92 Appeals.

400.93 Administrative review.

400.94 Mediation.

400.95 Time limitations for filing and re-
sponding to requests for administrative
review.

400.96 Judicial review.

400.97 Reservations of authority.

400.98 Reconsideration process.

Subpart K—Debt Management—Regula- tions for the 1986 and Succeeding Crop Years

400.115 Purpose.

400.116 Definitions.

400.117 Determination of delinquency.

400.118 Demand for payment.

400.119 Notice to debtor; credit reporting
agency.

400.120 Subsequent disclosure and
verification.

400.121 Information disclosure limitations.

400.122 Attempts to locate debtor.

400.123 Request for review of the indebted-
ness.

400.124 Disclosure to credit reporting agen-
cies.

400.125 Notice to debtor, collection agency.

400.126 Referral of delinquent debts to con-
tract collection agencies.

400.127 [Reserved]

400.128 Definitions.

400.129 Salary offset.

400.130 Notice requirements before offset.

400.131 Request for a hearing and result if
an employee fails to meet deadlines.

400.132 Hearings.

400.133 Written decision following a hearing.

400.134 Review of FCIC record related to the
debt.

400.135 Written agreement to repay debt as
an alternative to salary offset.

400.136 Procedures for salary offset; when
deductions may begin.

400.137 Procedures for salary offset; types of
collection.

400.138 Procedures for salary offset; meth-
ods of collection.

400.139 Nonwaiver of rights.

400.140 Refunds.

400.141 Internal Revenue Service (IRS) Tax
Refund Offset.

400.142 Past-due legally enforceable debt el-
igible for refund offset.

Subpart L—Reinsurance Agreement— Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

400.161 Definitions.

400.162 Qualification ratios.

400.163 Applicability.

400.164 Availability of the Standard Rein-
surance Agreement.

400.165 Eligibility for Standard Reinsurance
Agreements.

400.166 Obligations of the Corporation.

400.167 Limitations on Corporation's obliga-
tions.

400.168 Obligations of participating insur-
ance company.

400.169 Disputes.

400.170 General qualifications.

400.171 Qualifying when a state does not re-
quire that an Annual Statutory Finan-
cial Statement be filed.

400.172 Qualifying with less than two of the
required ratios or ten of the analytical
ratios meeting the specified require-
ments.

400.173 [Reserved]

Pt. 400

7 CFR Ch. IV (1–1–05 Edition)

- 400.174 Notification of deviation from financial standards.
- 400.175 Revocation and non-acceptance.
- 400.176 State action preemptions.
- 400.177 [Reserved]

Subpart M—Agency Sales and Service Contract—Standards for Approval

- 400.201 Applicability of standards.
- 400.202 Definitions.
- 400.203 Financial statement and certification.
- 400.204 Notification of deviation from standards.
- 400.205 Denial or termination of contract and administrative reassignment of business.
- 400.206 Financial qualifications for acceptability.
- 400.207 Representative licensing and certification.
- 400.208 Term of the contract.
- 400.209 Electronic transmission and receiving system.
- 400.210 [Reserved].

Subpart N [Reserved]

Subpart O—Non-Standard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

- 400.301 Basic, purpose, and applicability.
- 400.302 Definitions.
- 400.303 Initial selection criteria.
- 400.304 Nonstandard Classification determinations.
- 400.305 Assignment of Nonstandard Classifications.
- 400.306 Spouses and minor children.
- 400.307 Discontinuance of participation.
- 400.308 Notice of Nonstandard Classification.
- 400.309 Requests for reconsideration.

Subpart P—Preemption of State Laws and Regulations

- 400.351 Basis and applicability.
- 400.352 State and local laws and regulations preempted.

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

- 400.401 Basis and purpose and applicability.
- 400.402 Definitions.
- 400.403 Required system of records.
- 400.404 Policyholder responsibilities.
- 400.405 Agent and loss adjuster responsibilities.
- 400.406 Insurance provider responsibilities.
- 400.407 Restricted access.
- 400.408 Safeguards and storage.

- 400.409 Unauthorized disclosure.
- 400.410 Penalties.
- 400.411 Obtaining personal records.
- 400.412 Record retention.
- 400.413 [Reserved]

Subpart R—Sanctions

- 400.451 General.
- 400.452 Definitions.
- 400.453 Exhaustion of administrative remedies.
- 400.454 Civil penalties.
- 400.455 Governmentwide debarment and suspension (procurement).
- 400.456 Governmentwide debarment and suspension (nonprocurement).
- 400.457 Program Fraud Civil Remedies Act.
- 400.458 Scheme or device.
- 400.459 Indebtedness.
- 400.460–400.500 [Reserved]

Subpart S [Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

- 400.650 Purpose.
- 400.651 Definitions.
- 400.652 Insurance availability.
- 400.653 Determining crops of economic significance.
- 400.654 Application and acreage report.
- 400.655 Eligibility for other program benefits.
- 400.656–400.657 [Reserved]

Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

- 400.675 Purpose.
- 400.676 [Reserved]
- 400.677 Definitions.
- 400.678 Applicability.
- 400.679 Criteria for ineligibility.
- 400.680 Determination and notification of ineligibility.
- 400.681 Effect of ineligibility.
- 400.682 Criteria for reinstatement of eligibility.
- 400.683 Administration and maintenance.

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

- 400.700 Basis, purpose, and applicability.
- 400.701 Definitions.
- 400.702 Confidentiality of submission and duration of confidentiality.
- 400.703 Timing of submission.
- 400.704 Type of submission.
- 400.705 Contents required for a new submission or changes to a previously approved submission.
- 400.706 Review of submission.
- 400.707 Presentation to the Board for approval or disapproval.

Federal Crop Insurance Corporation, USDA

§ 400.45

- 400.708 Approved submission.
- 400.709 Roles and responsibilities.
- 400.710 Preemption and premium taxation.
- 400.711 Right of review, modification, and the withdrawal of reinsurance.
- 400.712 Research and development reimbursement, maintenance reimbursement, and user fees.
- 400.713 Non-reinsured supplemental (NRS) policy.

Subpart W [Reserved]

Subpart X—Interpretations of Statutory and Regulatory Provisions

- 400.765 Basis and applicability.
- 400.766 Definitions.
- 400.767 Requester obligations.
- 400.768 FCIC obligations.

Subparts A–B [Reserved]

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

AUTHORITY: 7 U.S.C. 1501 *et seq.*

SOURCE: 57 FR 56438, Nov. 30, 1992, unless otherwise noted.

§ 400.27 Applicability.

Notwithstanding any provisions of the crop insurance policy to the contrary, the mutual consent provision contained herein shall be applicable to all new crop insurance policies issued by the Federal Crop Insurance Corporation (7 CFR part 401 *et seq.*), or by a company reinsured by the Federal Crop Insurance Corporation, effective for the applicable crop year only if those policies meet the requirements of § 400.28 of this subpart and if the crop insured is the same as the crop for which a disaster payment application (CCC 441) was filed for the previous crop year.

[58 FR 67304, Dec. 21, 1993]

§ 400.28 Mutual consent criteria.

(a) An insured may request policy cancellation for the crop year for which the insured filed a CCC 441 for the applicable crop year if written documentation is provided, signed by an authorized Agricultural Stabilization and Conservation Service official, certifying the cancellation is based on one of the following conditions:

(1) Insurance was not a condition of eligibility for disaster payment, based on one or more of the statutory criteria; or

(2) the producer withdrew his application for disaster payments with prejudice or it was rejected by Commodity Credit Corporation;

(b) Cancellation requests must be received in writing no later than three weeks after the date:

(1) The disaster payment check is issued; or

(2) The producer is notified that an application for disaster payment has been rejected; or

(3) The producer withdraws from the disaster payment program.

(c) Carryover policies are not available for mutual consent cancellation. Crop insurance applications dated before the disaster cancellation date (available in the insureds' service office) are not eligible for mutual consent cancellations.

[57 FR 56438, Nov. 30, 1992, as amended at 58 FR 67304, Dec. 21, 1993]

§§ 400.29–400.36 [Reserved]

Subparts D–E [Reserved]

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

AUTHORITY: Secs. 1506, 1516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 *et seq.*); sec. 1244, Pub. L. 99–198.

SOURCE: 52 FR 19128, May 21, 1987, unless otherwise noted.

§ 400.45 Applicability.

(a) The regulations in this subpart implement Chapter XII and section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) (the Act) requiring the denial of crop insurance to persons who are determined to have performed certain practices prohibited by the Act or who have violated certain federal or State statutes or the regulations implementing the Act. The provisions of this subpart are applicable to all crop insurance policies written by the Federal Crop Insurance Corporation (the Corporation) or reinsured by the Corporation.

§ 400.46

7 CFR Ch. IV (1–1–05 Edition)

(b) The provisions of this subpart will be effective for the crop and crop year immediately following the first crop cancellation date occurring after the effective date of the Act for all crop policies reinsured by FCIC, and for all policies and regulations for crop insurance issued by FCIC.

§ 400.46 Definitions.

For the purpose of this regulation and in addition to the definitions included at 7 CFR 12.2, the following definitions are applicable:

(a) *Controlled substance* means any prohibited drug-producing plants including, but not limited to, cacti of the genus *lophophora*, coca bushes (*erythroxylum coca*), marijuana (*cannabis sativa*), opium poppies (*papaver somniferum*), and other drug-producing plants, the planting and harvesting of which is prohibited by Federal or State law.

(b) *Person* means any producer, tenant, or landlord, insured under a policy of crop insurance issued by FCIC, or by a multi-peril insurance company whose crop insurance policy is reinsured by FCIC.

(c) *State* means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific.

(d) *The Act* means the Food Security Act of 1985 (Pub. L. 99-198).

§ 400.47 Denial of crop insurance.

(a) Any person convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year will be ineligible for crop insurance during that crop year and the four succeeding crop years.

(1) The insurance of such person insured by FCIC who found to be ineligible under paragraph (a) of this section will be null and void, and any indemnity paid on such insurance must be returned in full to FCIC. Any premium paid for insurance coverage declared null and void will be returned, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid.

(2) The application and policy of insurance will be voided, or the person will be removed from the policy and the policyholder share reduced in accordance with 7 CFR 400.681(b), when any person becomes ineligible for crop insurance under the provisions of paragraph (a) of this section. To obtain crop insurance coverage following the period of ineligibility, the person must submit a new application for crop insurance.

(b) Any insurance written by a multi-peril crop insurance company to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance under the Corporation's standard reinsurance agreement. Any premium subsidy and expense allowance or loss paid by the Corporation because of such agreement will be immediately refunded to the Corporation. Notwithstanding any other provision of law, policies written by multi-peril crop insurance companies to any person ineligible under the provisions of this subpart are null and void. Premium paid for such policies will be refunded to the person applying for insurance, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid, and no indemnity will be paid unless the multi-peril company expressly agrees to continue such policy in effect without FCIC reinsurance. However, if the reinsured company follows the procedure of the Corporation and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

(c) FCIC employees or contractors are required to report all suspected cases of violation of the Act or the regulations to the appropriate agency for a determination of violation. Benefits shall not be paid in such cases pending a determination from the appropriate agency.

(d) Notwithstanding any other provision of this subpart, any crop insurance policy where insurance attached to a crop prior to August 15, 1986, will continue in effect for that crop until the

Federal Crop Insurance Corporation, USDA

§ 400.52

next termination date following August 15, 1986.

[52 FR 19128, May 21, 1987, as amended at 58 FR 17945, Apr. 7, 1993; 61 FR 38058, July 23, 1996; 65 FR 29942, May 10, 2000]

§ 400.48 Protection of interests of tenants, landlords or producers.

Any tenant, landlord or producer on the farm separate from the person declared ineligible for crop insurance under the provisions of § 400.47 of this part, will remain eligible for crop insurance on their insurable share in the crop, unless such tenant, landlord, or producer on the farm is:

(a) Also convicted of planting, cultivating, growing, producing, or storing a controlled substance;

(b) Otherwise determined by FCIC to be ineligible for crop insurance.

[52 FR 19128, May 21, 1987, as amended at 61 FR 38058, July 23, 1996]

§§ 400.49–400.50 [Reserved]

Subpart G—Actual Production History

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 59 FR 47787, Sept. 19, 1994, unless otherwise noted.

§ 400.51 Availability of actual production history program.

An Actual Production History (APH) Coverage Program is offered under the provisions contained in the following regulations:

7 CFR part 457—Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the special provisions.

The APH program operates within limits prescribed by, and in accordance with, the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section in those areas where the Actuarial Table provides coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

[59 FR 47787, Sept. 19, 1994, as amended at 69 FR 9520, Mar. 1, 2004]

§ 400.52 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions apply for the purposes of the APH Coverage Program:

(a) *APH*—Actual Production History.

(b) *Actual yield*—The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres for annual crops or by insurable acres for perennial crops.

(c) *Adjusted yield*—The transitional or determined yield reduced by the applicable percentage for lack of records. The adjusted yield will equal 65 percent of the transitional or determined yield, if no producer records are submitted; 80 percent, if records for one year are submitted; and 90 percent, if two years of records are submitted.

(d) *Appraised production*—Production determined by the Agricultural Stabilization and Conservation Service (ASCS), the FCIC, or a company reinsured by the FCIC, that was unharvested but which reflected the crop's yield potential at the time of the appraisal. For the purpose of APH "appraised production" specifically excludes production lost due to uninsurable causes.

(e) *Approved APH yield*—A yield, calculated and approved by the verifier, used to determine the production guarantee and determined by the sum of the yearly actual, assigned, and adjusted or unadjusted transitional or determined yields divided by the number of yields contained in the database. The database may contain up to 10 consecutive crop years of actual and or assigned yields. At least four yields will always exist in the database.

(f) *Assigned yield*—A yield assigned by FCIC in accordance with the crop insurance contract, if the insured does not file production reports as required by the crop insurance contract. Assigned yields are used in the same manner as actual yields when calculating APH yields except for purposes of the Nonstandard Classification System (NCS).

(g) *Base period*—Ten consecutive crop years (except peaches, which have a five-year base period) immediately preceding the crop year defined in the insurance contract for which the approved APH yield is being established (except for sugarcane, which begins the calendar year preceding the immediate previous crop year defined in the insurance contract).

(h) *Continuous production reports*—Reports submitted by a producer for each crop year that the unit was planted to the crop and for the most recent crop year in the base period.

(i) *Crop year*—Defined in the crop insurance contract, however, for APH purposes the term does not include any year when the crop was not planted or when the crop was prevented from being planted by an insurable cause. For example, if an insured plants acreage in a county to wheat one year, that year is a crop year in accordance with the policy definition. If the land is summerfallowed the next calendar year, that calendar year is not a crop year for the purpose of APH.

(j) *Database*—A minimum of four years up to a maximum of ten crop years of production data used to calculate the approved APH yield.

(k) *Determined yield (D-yield)*—An estimated year for certain crops, which can be determined by multiplying an average yield for the crop (attained by using data available from The National Agricultural Statistics Service (NASS) or comparable sources) by a percentage established by the FCIC for each county.

(l) *Master yields*—Approved APH yields, for certain crops and counties as initially designated by the FCIC, based on a minimum of four crop years of production records for a crop within a county.

(m) *New producer*—A person who has not been actively engaged in farming for a share of the production of the insured crop for more than two crop years.

(n) *Production report*—A written record showing the insured crop's annual production and used to determine the insured's yield for insurance purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, in-

surable acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by written verifiable records, measurement of farm stored production, or by other records of production approved by FCIC on an individual basis. Information contained in a claim for indemnity is considered a production report for the crop year for which the claim was filed.

(o) *Production Reporting Date (PRD)*—The PRD is contained in the crop insurance contract and is the last date production reports will be accepted for inclusion in the database for the current crop year.

(p) *Transitional yield (T-Yield)*—An estimated yield, for certain crops, generally determined by multiplying the ASCS program yield by a percentage determined by the FCIC for each county and provided on the actuarial table to be used in the APH yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(q) *Verifiable records*—Contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report.

(r) *Verifier*—A person authorized by the FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends which will require determination of the APH yield by the FCIC.

§ 400.53 Yield certification and acceptability.

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage for annual crops or insurable acres for perennial crops, as well as harvested and appraised production by unit.

(2) The insured must certify the accuracy of the information.

(3) Production reported for more than one crop year must be continuous. A

year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The reported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in voidance of the crop insurance contract, as well as criminal or civil false claims penalties pursuant to applicable Federal criminal or civil statutes.

§ 400.54 Submission and accuracy of production reports.

(a) The insured is solely responsible for the timely submission and certification of accurate, complete production reports to the agent. Production reports must be provided for all planted units.

(b) Records may be requested by the FCIC, or an insurance company reinsured by the FCIC, or by anyone acting on behalf of the FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier, along with any requested and required supporting records for determination of an approved APH yield.

(d) The verifier will determine if the certified production reports are acceptable and calculate the approved APH yield.

§ 400.55 Qualification for actual production history coverage program.

(a) The approved APH yield is calculated from a database containing a minimum of four yields and will be updated each subsequent crop year. The database may contain a maximum of the 10 most recent crop years and may include actual, assigned, and adjusted or unadjusted T or D-Yields. T or D-Yields, adjusted or unadjusted, will only occur in the database when there are less than four years of actual and/or assigned yields.

(b) The insured may be required to provide production records to determine the approved APH yield, if production records for the most recent crop year are available. If acceptable

records of actual production are provided, the records must be continuous and contain at least the most recent crop year's actual yield.

(1) If no acceptable production records are available, the approved APH yield is the adjusted T or D-Yield (65 percent of T or D-Yield).

(2) If acceptable production records containing information for only the two most recent crop years are provided, the three T or D-Yields adjusted by 80 percent will be used to complete the minimum database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two T or D-Yields adjusted by 90 percent and the two actual yields will be used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted T or D-Yields or a combination of actual and unadjusted T or D-Yields.

(7) Producers who add land or new practice, types and varieties to their farming operations and who do not have available records for the added land, practice, types or varieties may have approved APH yields for the added land, practice, types or varieties that are based on adjusted or unadjusted T or D-Yields as determined by FCIC.

(8) If the producer's crop is destroyed or if it produces a low actual yield due to insured causes of loss, the resulting average yield may qualify for catastrophic yield adjustment according to FCIC guidelines. APH yields qualifying for catastrophic yield adjustment may be adjusted to mitigate the effect of catastrophic years. Premium rates for approved APH yields, which are adjusted for catastrophic years, may be based on the producer's APH average

yield prior to the catastrophic adjustment or such other basis as determined appropriate by FCIC.

(c) If *no insurable acreage of the insured crop is planted* for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the APH yield calculations.

(d) Actual yields calculated from the claim for indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) Optional units are not available to an insured who does not provide acceptable production reports for at least the most recent crop year with which to calculate an approved APH yield.

(f) FCIC may determine approved APH yields for designated crops in the following situations:

(1) If less than four years of yield history is certified and T or D-Yields are not provided in the actuarial documents,

(2) If actual yield exceed tolerances specified in yield variance tables, and

(3) For perennial crops:

(i) If significant upward or downward yield trends are indicated;

(ii) If tree or vine damage, or cultural practices will reduce the production level;

(iii) if more than two percent of the trees or vines have been removed within the last two years; or

(iv) If yield trends are evident and yields greater than the average yield are requested by the insured.

(g) APH yields will not be approved the first insurance year on perennial crops until an inspection acceptable to FCIC has been performed and the acreage is accepted for insurance purposes in accordance with the crop insurance contract.

(h) APH Master Yields may be established whenever crop rotation requirements and land leasing practices limit the yield history available. FCIC will establish crops and locations for which Master Yields are available. To qualify, the producer must have at least four recent continuous crop years' annual production reports and must certify

the authenticity of the production reports of the insured crop. Master Yields are based on acreage and production history from all acreage of the insured crop in the county in which the operator has shared in the crop's production.

(i) FCIC may use any production report available under the provisions of any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 [Reserved]

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AUTHORITY: 5 U.S.C. 1320, Pub. L. 96-511 (44 U.S.C., chapter 35).

SOURCE: 56 FR 49390, Sept. 30, 1991, unless otherwise noted.

§ 400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

AUTHORITY: 7 U.S.C. 1506(l), 1506(p)

SOURCE: 67 FR 13251, Mar. 22, 2002, unless otherwise noted.

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term

includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

Appellant. Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term “appellant” includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

Insured. An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and

§ 400.91

7 CFR Ch. IV (1–1–05 Edition)

continues to be in effect for the current crop year.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RSO. The Regional Service Office established by the Agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (see § 400.98).

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review or mediation under this subpart, as applicable.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is

Federal Crop Insurance Corporation, USDA

§ 400.95

concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94, but not both.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at <http://www.act.fcic.usda.gov>.

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision. A request for an administrative review will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to

§ 400.96

7 CFR Ch. IV (1–1–05 Edition)

timely file the request for administrative review.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.96 Judicial review.

Except as provided in § 400.98, with respect to adverse determinations:

(a) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(b) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(c) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

§ 400.98 Reconsideration process.

(a) This reconsideration process only applies to determinations of good farming practices under § 400.91(a)(2).

(b) There is no appeal to NAD of determinations or reconsideration decisions regarding good farming practices.

(c) Only reconsideration is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(d) If the insured seeks reconsideration, the insured must file a written request for reconsideration to the following: USDA/RMA/Deputy Administrator for Insurance Services/Stop 0805, 1400 Independence Avenue SW., Washington, DC 20250-0801.

(1) A request for reconsideration must be filed within 30 days of receipt of written notice of the determination regarding good farming practices. A request for reconsideration will be considered to have been “filed” when personally delivered in writing to FCIC or when the properly addressed request, postage paid, is postmarked.

(2) Notwithstanding paragraph (d)(1) of this section, an untimely request for reconsideration may be accepted and acted upon if the insured can demonstrate a physical inability to timely file the request for reconsideration.

(3) The written request must state the basis upon which the insured relies to show that:

(i) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(ii) All material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless

Federal Crop Insurance Corporation, USDA

§ 400.118

the reconsideration decision is found to be arbitrary or capricious.

[68 FR 37720, June 25, 2003]

Subpart K—Debt Management— Regulations for the 1986 and Succeeding Crop Years

AUTHORITY: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 17316, May 12, 1986, unless otherwise noted.

§ 400.115 Purpose.

This subpart sets forth procedures that will be followed, and the rights afforded to debtors, in connection with the reporting by the Federal Crop Insurance Corporation (FCIC) to credit reporting agencies of information with respect to current and delinquent debts owed to FCIC, and in connection with referral of delinquent debts to contract collection agencies.

§ 400.116 Definitions.

(a) *Credit reporting agency* means (1) a reporting agency as defined at 4 CFR 102.5(a), or (2) any entity which has entered into an agreement with USDA concerning the referral of credit information.

(b) *Collection agency* means a private debt collection contractor under Federal Supply Schedule contract with the General Services Administration (GSA) for professional debt collection services.

(c) *Comptroller* means the employee of FCIC filling that position or the person designated by the Comptroller to perform that function.

(d) *Debt and claim* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money which has been determined by an appropriate agency official to be owed to FCIC by any individual, organization or entity, except another Federal agency; State, local or foreign government or agencies thereof; Indian tribal governments; or other public institutions.

The debt or claim may have arisen from overpayment, premium non-payment, interest, penalties, reclamations resulting from payments under good

faith reliance provisions, or other causes.

(e) *Delinquent debt* means (1) any debt owed to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(f) *System of records* means a group of any records under the control of FCIC from which information is retrieved by the name of the individual by some identifying number, symbol, or other identification assigned to the individual.

(g) *Request for review* means that request submitted to FCIC by a debtor for a review of the facts resulting in the determination of indebtedness to FCIC. FCIC allows 45 days for such request and any request submitted within that period is considered a timely request.

§ 400.117 Determination of delinquency.

Prior to disclosing information about a debt to a credit reporting agency in accordance with this subpart, the FCIC claims official, designated as the Comptroller, FCIC, or the designee of the Comptroller who has jurisdiction over the claim, shall review the claim and determine that the claim is valid and overdue.

§ 400.118 Demand for payment.

The Comptroller who is responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Manager, FCIC, the Federal Claims Collection Standards at 4 CFR 102.2, or the contract between the General Services Administration (GSA) and the collection agency.

§ 400.119

7 CFR Ch. IV (1–1–05 Edition)

§ 400.119 Notice to debtor; credit reporting agency.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller who is responsible for disclosure of information with respect to delinquent debts to a credit reporting agency shall send written notice to the delinquent debtors that FCIC intends to disclose credit information to a credit reporting agency on a regular basis. In addition, delinquent debtors are to be informed:

- (1) Of the basis for the indebtedness;
- (2) That the payment is overdue;
- (3) That FCIC intends to disclose to a credit reporting agency that the debtor is responsible for the debt and with respect to an individual, that such disclosure shall be made not less than 60 days after notification to such debtor;
- (4) Of the specific information intended to be disclosed to the credit reporting agency;
- (5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the system of records of FCIC concerning the claim;
- (6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and
- (7) Of the date after which the information will be reported to the credit reporting agency.

(b) The content and standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

§ 400.120 Subsequent disclosure and verification.

(a) FCIC shall promptly notify each credit reporting agency to which the original disclosure of debt information was made of any substantial change in the condition or amount of the claim. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payments received, additional amounts due, or offsets made with respect to the debt.

(b) FCIC shall promptly verify or correct, as appropriate, information about

the claim or request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

(c) FCIC shall obtain satisfactory assurances from each reporting agency to which information will be provided that the agency is in compliance with the provisions of all laws and regulations of the United States relating to providing credit information.

§ 400.121 Information disclosure limitations.

FCIC shall limit delinquent debt information disclosed to credit reporting agencies to:

- (a) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;
- (b) The amount, status, and history of the claim; and
- (c) The FCIC program under which the claim arose.

§ 400.122 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, FCIC shall take reasonable action to locate a debtor for whom FCIC does not have a current address in order to send the notification in accordance with § 400.119 of this subpart.

§ 400.123 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, FCIC shall, upon request of the debtor, provide for a review of the claim, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable administrative appeal procedures.

(b) Upon receipt of a timely request for review, FCIC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on the request.

(c) Upon completion of the review, the reviewing office shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information

concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

§ 400.124 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller or designated manager of the systems of records shall disclose to credit reporting agencies the information specified in § 400.121.

(b) Disclosure of information to credit reporting agencies shall be made on or after the date specified in §§ 400.119(a)(3) and 400.125 and shall be comprised of the information set forth in the initial determination or any modification thereof.

(c) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to a repayment agreement for such debt and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or designee has not issued a decision on the review.

§ 400.125 Notice to debtor, collection agency.

FCIC shall provide 30 days written notice to the debtor, mailed to the debtor's last known address, of FCIC's intent to forward the debt to a collection agency for further collection action.

§ 400.126 Referral of delinquent debts to contract collection agencies.

(a) FCIC shall use the services of a contract collection agency which has entered into a contract with the General Services Administration to recover debts owed to FCIC.

(b) If FCIC's collection efforts have been unsuccessful on a delinquent debt, and the delinquent debt remains unpaid, FCIC may refer the debt to a contract collection agency for collection.

(c) FCIC shall retain the authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation.

§ 400.127 [Reserved]

§ 400.128 Definitions.

(a) *Agency* means (1) An Executive Agency as defined by 5 U.S.C. 105, the United States Postal Service, and the United States Postal Rate Commission, or (2) A Military Department, as defined by section 102 of Title 5 U.S.C.

(b) *Debt* means:

(1) An amount owed to the United States from sources including, but not limited to, insured or guaranteed loans, fees, leases, insurance premiums, interest (except where prohibited by law), rents, royalties, services, sale of real or personal property, overpayments, penalties, damages, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable because of such employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel reimbursement;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(c) *Department* or *USDA* means the United States Department of Agriculture.

(d) *Disposable salary (pay)* means any pay due an employee which remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance

benefits; and such other deductions as may be required by law to be withheld.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *FCIC Official* means the Manager, or the Manager's designee.

(g) *Hearing Officer* means an Administrative Law Judge of the Department of Agriculture or another person not under the control of the USDA, designated by the FCIC Official to review the determination of the alleged debt.

(h) *Salary Offset* means a deduction of a debt due the U.S. by deduction from the disposable salary of an employee without the employee's consent.

(i) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

[53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.129 Salary offset.

(a) Debt collection by salary offset is feasible if: the cost to the Government of collection by salary offset does not exceed the amount of the debt; there are no legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court or the expiration of a statute of limitations; or, other such legal restrictions. The Debt Collection Act permits collections of debts by offset for claims that have not been outstanding for more than 10 years.

(b) The salary offset provisions contained herein provide procedures which must be followed before FCIC may request another Federal agency to offset any amount from the debtor's salary. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in part 400, subpart J of this title.

(c) These regulations will not apply to any case where collection of a debt by salary offset is explicitly provided for by another statute as noted by the Comptroller General in 64 Comp. Gen. 142 (1984), including 5 U.S.C. 5512(a), 5 U.S.C. 5513, 5 U.S.C. 5522(a) (1), 5 U.S.C. 5705 (1) and (2), and 5 U.S.C. 5724(f).

(d) Salary offset may be used by FCIC to collect debts which arise from delinquent FCIC premium payments or delinquent repayment plans and other debts arising from, but not limited to, such sources as program theft, embezzlement, fraud, salary overpayments, underwithholding of any amounts due and payable for life and health insurance, advance travel payments, overpaid indemnities, and any amount owed by present or former employees from loss of federal funds through negligence and other matters. The debt does not have to be reduced to judgment and does not have to be covered by a security instrument.

(e) FCIC may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Salary offset will not be initiated until after other servicing options available to the requesting agency have been utilized, and due process has been afforded to the FCIC employee. When salary offset is utilized, payment for the debt will be deducted from the employee's salary and sent directly to the creditor agency. Not more than fifteen percent (15%) of the employee's disposable salary can be offset in any one pay period, unless the employee agrees in writing to the deduction of a larger amount.

(f) When FCIC is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until FCIC provides the agency with a written certification that the debtor owes FCIC a debt (including the amount and basis of the debt and the due date of the payment), and that FCIC has complied with Department regulations. If a repayment schedule is elected by the employee, interest will be charged in accordance with Departmental Regulation 2520-1, Interest Rate on Delinquent Debts; USDA Debt Collection Regulations in 7 CFR part 3; and 4 CFR 102.13.

(g) For the purposes of this section, the Manager, FCIC, or the Manager's designee, is delegated authority to:

(1) Certify to the debtor's employing agency that the debt exists and the amount of the debt or delinquent balance;

(2) Certify that, with respect to debt collection, the procedures and regulations of FCIC and the Department have been complied with; and

(3) Request that salary offset be initiated by the debtor's employing agency.

[53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.130 Notice requirements before offset.

Salary offset will not be made unless the employee receives 30 calendar days written notice. The notice of intent to offset salary (notice of intent) will state:

(a) That FCIC has reviewed the records relating to the debt and has determined that the debt is owed, and has verified the amount of the debt, and the facts giving rise to the debt;

(b) That FCIC intends to deduct an amount not to exceed 15% of the employees current disposable salary until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the requirements concerning interest, penalties, and administrative costs, including a statement that these assessments will be made unless waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34;

(e) That FCIC's records concerning the debt are available to the employee for inspection and that the employee may request a copy of such records;

(f) That the employee has a right to voluntarily enter into a written agreement with FCIC for a repayment schedule with FCIC, which may be different from that proposed by FCIC, if the terms of the repayment agreement are agreed to by FCIC;

(g) That the employee has the right to a hearing conducted by an Administrative Law Judge of USDA, or a hearing official not under the control of USDA, concerning the determination of the debt, the amount of the debt, or the percentage of disposable salary to be deducted each pay period, if the petition for a hearing is filed by the employee as prescribed by FCIC;

(h) The method and time period allowable for a petition for a hearing;

(i) That the timely filing of a hearing petition will stay the offset collection proceedings;

(j) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(k) That any knowingly false or frivolous statement, representation, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable Statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(l) Any other rights or remedies available to the employee under any statute or regulations governing the program for which collection is being made;

(m) That the employee may request waiver of salary overpayment under applicable statutory authority (5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 8346(b)), or may request waiver in the case of general debts and if waiver is available under any statutory provision pertaining to the particular debt being collected. The employee may question the amount or validity of the salary overpayment or general debt by submitting a claim to the Comptroller General in accordance with General Accounting Officer procedure.

(n) That amounts paid on or deducted for the debt which are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary; and

(o) The name and address of an official of FCIC to whom the employee should direct any communication with respect to the debt.

[53 FR 4, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.131

§ 400.131 Request for a hearing and result if an employee fails to meet deadlines.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for hearing that is received by the FCIC Official not later than 30 calendar days from the date of the notice of intent to collect a debt by salary offset, if the employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The FCIC Official's proposed offset schedule, including the percentage of deduction.

(b) The petition must be signed by the employee and should clearly identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support the his or her position. If the employee objects to the percentage of disposable salary to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 days provided in paragraph (a) of this section, the FCIC Official may accept the petition if the employee is able to show that the delay caused by conditions beyond his or her control, or because the employee failed to receive the notice of the filing deadline (unless the employee has actual notice of the deadline).

(d) An employee will not be granted a hearing and will have his or her disposable salary offset in accordance with the FCIC Official's announced schedule if the employee:

(1) Fails to file a petition for hearing as set forth in this subsection; or

(2) Is scheduled to appear and fails to appear at the hearing.

[53 FR 4, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.132 Hearings.

(a) If an employee timely files a petition for a hearing, the FCIC Official will select the date, time, and location for the hearing.

(b) The hearing shall be conducted by an appropriately designated Hearing Official.

(c) Rules of evidence shall not be observed, but the hearing officer will con-

7 CFR Ch. IV (1-1-05 Edition)

sider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing, and weigh all such evidence accordingly, given all the facts and circumstances surrounding the debt.

(d) The burden of proof with respect to the existence of the debt rests with FCIC.

(e) The employee requesting the hearing shall bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists, or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.133 Written decision following a hearing.

(a) At the conclusion of the hearing, a written decision will be provided which will include:

(1) A statement of the facts presented at the hearing supporting the nature and origin of the alleged debt and those presented to refute the debt;

(2) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(3) The amount and validity of the alleged debt determined as a result of the hearing;

(4) The payment schedule (including the percentage of disposable salary), if applicable; and

(5) The determination of the amount of the debt at this hearing is the final agency action on this matter.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.134 Review of FCIC record related to the debt.

An employee who intends to inspect or copy FCIC records related to the debt must send a letter to the FCIC official (designated in the notice of intent) stating his or her intentions. The letter must be received by the FCIC official within 30 calendar days of the date of the notice of intent. In response to the timely notice submitted by the debtor, the FCIC official will notify the employee of the location and time

when the employee may inspect and copy FCIC records related to the debt.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.135 Written agreement to repay debt as an alternative to salary offset.

The employee may propose, in response to a notice of intent, a written agreement to repay the debt as an alternative to salary offset. The proposed written agreement to repay the debt must be received by the FCIC official within 30 calendar days of the date of the notice of intent. The FCIC official will notify the employee whether the employee's proposed written agreement for repayment is acceptable. The FCIC official may accept a repayment agreement instead of proceeding by offset. In making this determination, the FCIC official will balance the FCIC interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the FCIC official will accept a repayment agreement, instead of offset, for good cause such as, if the employee establishes that offset would result in undue financial hardship, or would be against equity and good conscience.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.136 Procedures for salary offset; when deductions may begin.

(a) Deductions to liquidate an employee's debt will be made by the method and in the amount outlined in the Notice of Intent to collect from the employee's salary, as provided for in § 400.130.

(b) If the employee files a petition for a hearing before the expiration of the period provided for in § 400.130, then deductions will begin after the hearing officer has provided the employee with a final written decision in favor of FCIC.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected in

accordance with procedures for administrative offset.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.137 Procedures for salary offset; types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the disposable pay for an ordinary pay period. In these cases, deduction will be by installments as set forth in § 400.138.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.138 Procedures for salary offset; methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the hearing official agree to alternative arrangements for repayment under § 400.135.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of the installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$25.00 per pay period, or \$50.00 per month, will be accepted only in the most unusual circumstances.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.139 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under the provisions of 5 U.S.C. 5514.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.140

7 CFR Ch. IV (1-1-05 Edition)

§ 400.140 Refunds.

FCIC will promptly refund to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(b) FCIC is directed by an administrative or judicial order to refund amounts deducted from an employee's current pay.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.141 Internal Revenue Service (IRS) Tax Refund Offset.

Under the provisions of 31 U.S.C. 3720A, the (IRS) may be requested to collect a legally enforceable debt owing to any Federal agency by offset against a taxpayer's Federal income tax refund. This section provides policies and procedures to implement IRS tax refund offsets in accordance with the provisions set forth in §301.6402-6T of 26 CFR chapter I.

(a) Any person who is indebted to the Federal Crop Insurance Corporation (FCIC) is entitled to the extent of FCIC's administrative due process including review and appeal of the debt under the Appeal Regulations in 7 CFR part 400, subpart J.

(b) If, after such administrative due process is exhausted, the debt is still outstanding with no other means of collection, the debtor will be notified by letter of FCIC's intention to refer such debt to the IRS for collection by tax refund offset. The notification letter will inform the debtor that their account is delinquent and that IRS will be requested to reduce the amount of any tax refund check due the debtor by the amount of the delinquency. The debtor will be given 60 days in which to write to the Manager, FCIC, providing written evidence that the debt is not legally enforceable. FCIC will refer the debt to IRS for collection by offset after the 60-day period if no response is received from the debtor. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in 7 CFR part 400, subpart J.

(c) If the debtor has requested a review, and has provided written evidence that the debt is not legally enforceable, the Manager, with the assistance of the Office of General Counsel, USDA, will review the debtor's reasons for believing that the debt is not legally enforceable. The debtor will then be notified of the results of the review.

(d) FCIC will notify IRS of those accounts against which offset action is to be taken.

(e) If, during the period of review, the debtor pays the debt in full, the collection of the debt by tax refund offset procedure will be halted. Changes in debtor status that eliminate the debtor from IRS offset will be reported to IRS by FCIC and the debtor's refund will not be offset.

(f) Amounts offset for delinquent debt which are later found to be not owed to FCIC, will be promptly refunded.

(g) Debtors will not be subject to IRS offset for any of the following reasons:

(1) Debtors who are discharged in bankruptcy or who are under the jurisdiction of a bankruptcy court;

(2) Debtors who are employed by the Federal Government;

(3) Debtors whose cases are in suspense because of actions pending by or taken by FCIC;

(4) Debtors who have not provided a Social Security Number (SSN) and no SSN can be obtained;

(5) Debtors whose indebtedness is less than \$25;

(6) Debtors whose account is more than ten (10) years delinquent; except in the case of a judgment debt; or

(7) Debtors whose account has not been first reported to a consumer credit reporting agency.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.142 Past-due legally enforceable debt eligible for refund offset.

For purposes of this section, a past-due, legally enforceable debt which may be referred by FCIC to IRS for offset is a debt which:

(a) Except in the case of a judgement debt, has been delinquent for at least three months but has not been delinquent for more than 10 years at the time the offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(d) With respect to which the agency has given the employee at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such employee, and has determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by FCIC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to IRS after June 30, 1986;

(f) With respect to which that FCIC has notified, or has made a reasonable attempt to notify, the employee that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, will be referred to IRS for offset against any overpayment of tax; and

(3) Which is at least \$25.00.

[53 FR 6, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 52 FR 17543, May 11, 1987, unless otherwise noted. Redesignated at 53 FR 3, Jan. 4, 1988, and further redesignated at 53 FR 10527, Apr. 1, 1988.

§ 400.161 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insur-

ance department if required by any state in which the insurer is licensed.

(b) *Company* means the company reinsured by FCIC or apply to FCIC for a Standard Reinsurance Agreement.

(c) *Corporation* means the Federal Crop Insurance Corporation.

(d) *FCIC* means the Federal crop Insurance Corporation.

(e) *Financial statement* means any documentation submitted by a company as required by this subpart.

(f) *Guaranty fund assessments* means the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(g) *Insurer* means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(h) *MPUL* means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

(i) *Obligations* mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(j) *Plan of operation* means a statement submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(k) *Quarterly Statutory Financial Statement* means the quarterly financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

(l) *Reinsurance agreement* means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(m) *Reinsured* means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

§ 400.162

(n) *Standard Reinsurance Agreement* (Agreement) means the reinsurance agreement between the reinsured and FCIC.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 57 FR 34666, Aug. 6, 1992; 60 FR 57903, Nov. 24, 1995]

§ 400.162 Qualification ratios.

The sixteen qualification ratios include:

(a) Eleven National Association of Insurance Commissioner's (NAIC's) Insurance Regulatory Information System (IRIS) ratios found in §§ 400.170(d)(1)(ii) and 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xii), (xiii), and (xiv) and referenced in "Using the NAIC Insurance Regulatory Information System" distributed by NAIC, 120 West 12th St., Kansas City, MO 64105-1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858-0700;

(c) One ratio found in § 400.170(d)(1)(i) is calculated the same as the Gross Premium to Surplus IRIS ratio, with Gross Premium adjusted to exclude the MPCI premium assumed by FCIC; and

(d) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period.

[60 FR 57903, Nov. 24, 1995]

§ 400.163 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1997 and subsequent reinsurance years or who continue with a prior years Standard Reinsurance Agreement into the 1997 and subsequent reinsurance years.

[60 FR 57903, Nov. 24, 1995]

§ 400.164 Availability of the Standard Reinsurance Agreement.

Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to

7 CFR Ch. IV (1-1-05 Edition)

producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and provisions of the regulations of the Corporation found at chapter IV of title 7 of the Code of Federal Regulations.

§ 400.165 Eligibility for Standard Reinsurance Agreements.

A Company will be eligible to participate in an Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

§ 400.166 Obligations of the Corporation.

The Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume all obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified by including in bold face or large type the following statement as item number 1 in its General Provisions:

This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 *et*

seq.), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in chapter IV of 7 CFR.

§ 400.167 Limitations on Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.168 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured.

(b) The Company shall make available to all eligible producers in the areas designated in its plan of operations as approved by the Corporation:

(1) The crop insurance plans for the crops designated in its plan of operation in those counties within a State, or a portion of a State, where the Secretary of Agriculture has determined that insurance is available through local offices of the United States Department of Agriculture; and

(2) Catastrophic risk protection, limited, and additional coverage plans of insurance for all crops, for which such insurance is made available by the Corporation, in all counties within a state, or a portion of State, where the Secretary of Agriculture has determined that insurance is no longer available through local offices of the United States Department of Agriculture.

(c) The Company shall provide the Corporation, on forms approved by the Corporation all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants determined to be ineligible for crop insurance coverage and all insured producers cancelled or terminated from insurance, along with the reason for such action, the crop program, and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex age, handicap, or national origin.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 61 FR 34368, July 2, 1996; 61 FR 65153, Dec. 11, 1996]

§ 400.169 Disputes.

(a) If the company believes that the Corporation has taken an action that is not in accordance with the provisions of the Standard Reinsurance Agreement or any reinsurance agreement with FCIC, except compliance issues, it may request the Deputy Administrator of Insurance Services to make a final administrative determination addressing the disputed action. The Deputy Administrator of Insurance Services will render the final administrative determination of the Corporation with respect to the applicable actions. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt after the disputed action.

(b) With respect to compliance matters, the Compliance Field Office renders an initial finding, permits the company to respond, and then issues a final finding. If the company believes that the Compliance Field Office's final finding is not in accordance with the

§ 400.170

applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may request, the Deputy Administrator of Compliance to make a final administrative determination addressing the disputed final finding. The Deputy Administrator of Compliance will render the final administrative determination of the Corporation with respect to these issues. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt of the final finding.

(c) A company may also request reconsideration by the Deputy Administrator of Insurance Services of a decision of the Corporation rendered under any Corporation bulletin or directive which bulletin or directive does not interpret, explain, or restrict the terms of the reinsurance agreement. The company, if it disputes the Corporation's determination, must request a reconsideration of that determination in writing, within 45 days of the receipt of the determination. The determinations of the Deputy Administrator will be final and binding on the company. Such determinations will not be appealable to the Board of Contract Appeals.

(d) Appealable final administrative determinations of the Corporation under paragraph (a) or (b) of this section may be appealed to the Board of Contract Appeals in accordance with the provisions of subtitle A, part 24 of title 7 of the Code of Federal Regulations.

[65 FR 3782, Jan. 25, 2000]

§ 400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be licensed or admitted in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to the MPUL for the com-

7 CFR Ch. IV (1-1-05 Edition)

pany's estimated retained premium proposed to be reinsured, multiplied by the appropriate Minimum Surplus Factor found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.5%) of all its reinsured retained premium is written in that state;

MINIMUM SURPLUS TABLE

Number of states in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiplied by MPUL)
1 through 10	2.5
11 or more	2.0

(d) Have and meet the ratio requirements of the Gross Premium to Surplus and Net Premium to Surplus required ratios and at least ten of the fourteen analytical ratios in this section based on the most recent Annual Statutory Financial Statement, or comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus.	Less than 900%.
(ii) Net Premium to Surplus.	Less than 300%.
(2) Analytical:	
(i) Two-Year Overall Operating Ratio.	Less than 100%.
(ii) Agents' Balances to Surplus.	Less than 40%.
(iii) One-Year Change in Surplus.	Greater than -10% and less than 50%.
(iv) Two-Year Change in Surplus.	Greater than -10%.
(v) Combined Ratio After Policyholder Dividends.	Less than 115%.
(vi) Change in Writing	Greater than -33% and less than 33%.
(vii) Surplus Aid to Surplus.	Less than 15%.
(viii) Quick Liquidity	Greater than 20%.
(ix) Liabilities to Liquid Asset.	Less than 105%.
(x) Return on Surplus	Greater than -5%.
(xi) Investment Yield	Greater than 4.5% and less than 10%.
(xii) One-Year Reserve Development to Surplus.	Less than 20%.
(xiii) Two-Year Reserve Development to Surplus.	Less than 20%.
(xiv) Estimated Current Reserve Deficiency to Surplus.	Less than 25%.

(e) Submit to FCIC all of the following statements:

- (1) Annual and Quarterly Statutory Financial Statements;
- (2) Statutory Management Discussion & Analysis;
- (3) Most recent State Insurance Department Examination Report;
- (4) Actuarial Opinion of Reserves;
- (5) Annual Audited Financial Report; and
- (6) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

[60 FR 57903, Nov. 24, 1995]

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with the insurance department of any state in which it is licensed.

[60 FR 57904, Nov. 24, 1995]

§ 400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.

An insurer with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements in § 400.170(d) may qualify if, in addition to the requirements of § 400.170 (a), (b), (c) and (e), the insurer:

- (a) Submits a financial management plan acceptable to FCIC to eliminate each deficiency indicated by the ratios, or an acceptable explanation why a failed ratio does not accurately represent the insurer's insurance operations; or
- (b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

[60 FR 57904, Nov. 24, 1995]

§ 400.173 [Reserved]

§ 400.174 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this chapter. FCIC may require the insurer to update its financial statements during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this chapter.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 60 FR 57904, Nov. 24, 1995]

§ 400.175 Revocation and non-acceptance.

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statements or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 60 FR 57904, Nov. 24, 1995]

§ 400.176 State action preemptions.

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied

§ 400.177

7 CFR Ch. IV (1-1-05 Edition)

on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of punitive or compensatory damages or an award of attorney fees or other costs against the Company issuing such policy, unless a determination is obtained from the Corporation that the Company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by the Corporation and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 69 FR 48730, Aug. 10, 2004]

§ 400.177 [Reserved]

Subpart M—Agency Sales and Service Contract—Standards for Approval

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 53 FR 24015, June 27, 1988, unless otherwise noted.

§ 400.201 Applicability of standards.

Federal Crop Insurance Corporation will offer an Agency Sales and Service Contract (the Contract) to private entities meeting the requirements set forth in this subpart under which the Corporation will insure producers of agricultural commodities. The Contract will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and the provisions of the regulations of the Corporation found at chapter IV of title 7 of the Code of Federal Regulations. The Standards contained herein are required for an entity to be a contractor under the Contract.

§ 400.202 Definitions.

For the purpose of these Standards:

(a) *Agency Sales and Service Contract* or *the Contract* means the written agreement between the Federal Crop

Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing Federal Crop Insurance policies and includes, but is not limited to, the following:

(1) The Agency Sales and Service Contract;

(2) Any Appendix to the Agency Sales and Service Contract issued by the Corporation;

(3) The annual approved Plan or Operation; and

(4) Any amendment adopted by the parties.

(b) *BELL 208B (or compatible) modem*—means a modem meeting the standards developed by BELL Laboratories for dial-up, half-duplex, 4800 or 9600 bits per second (bps) transmission of data utilizing 3780 (or 2780) protocol.

(c) *Contract*, *the* see Agency Sales and Service Contract.

(d) *Contractor's electronic system (system)* means the data processing hardware and software, data communications hardware and software, and printers utilized with the system.

(e) *CPA* means a Certified Public Accountant who is licensed as such by the State in which the CPA practices.

(f) *CPA Audit* means a professional examination conducted by a CPA in accordance with generally accepted auditing standards of a Financial Statement on the basis of which the CPA expresses an independent professional opinion respecting the fairness of presentation of the Financial Statement.

(g) *Current Assets* means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operation cycle of the business or within one year if the operation cycle is shorter than one year.

(h) *Current Liabilities* means those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(i) *Financial Statement* means the documents submitted to the Corporation by a private entity which portray the financial information of the entity.

The financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and reflect the financial position in the Statement of Financial Condition or Balance Sheet; and the result of operations in the Statement of Profit and Loss or Income Statement.

(j) *Processing representative* means a person or organization designated by the Contractor to be responsible for data entry and electronic transmission of data contained on crop insurance documents.

(k) *Sales* means new applications and renewals of FCIC policies.

(l) *Suspended Data Notice* means a notification of a temporary stop or delay in the processing of data transmitted to the Corporation by the Contractor because the same is incomplete, non-processable, obsolete, or erroneous.

(m) *3780 protocol*—means the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data.

§ 400.203 Financial statement and certification.

(a) An entity desiring to become or continue as a contractor shall submit to the Corporation a financial statement which is as of a date not more than eighteen (18) months prior to the date of submission.

(b) The financial statement submitted shall be audited by a CPA (CPA Audit); or if a CPA audited financial statement is not available, the statement submitted to the Corporation must be accompanied by a certification of:

(1) The owner, if the business entity is a sole proprietorship; or

(2) At least one of the general partners, if the business entity is a partnership; or

(3) The Chief Executive Officer and Treasurer, if the business entity is a Corporation, that said statement fairly represents the financial condition of the entity on the date of such certification to the Corporation. If the financial statement as certified by the Chief Executive Officer and Treasurer, part-

ner, or owner is submitted, a CPA audited financial statement must be submitted if subsequently available.

§ 400.204 Notification of deviation from standards.

A Contractor shall advise the Corporation immediately if the Contractor deviates from the requirements of these standards. The Corporation may require the Contractor to show compliance with these standards during the contract year if the Corporation determines that such submission is necessary. If the Corporation determines that the deviation is temporary, the Corporation may grant a temporary waiver pending compliance within a specified period of time. A waiver of any provision of these standards will not be granted to an applicant for a contract.

§ 400.205 Denial or termination of contract and administrative reassignment of business.

Non-compliance with these standards will result in:

(a) The denial of a Contract; or

(b) Termination of an existing Contract.

In the event of denial or termination of the Contract, all crop insurance policies of the Corporation sold by the Contractor and all business pertaining thereto may be assumed by the Corporation and may be administratively reassigned by the Corporation to another Contractor.

§ 400.206 Financial qualifications for acceptability.

The financial statement of an entity must show total allowable assets in excess of liabilities and the ability of the entity to meet current liabilities by the use of current assets.

§ 400.207 Representative licensing and certification.

(a) A Contractor must maintain twenty-five (25) licensed and certified Contractor Representatives.

(b) A Contractor's Representative who solicits, sells and services FCIC policies or represents the Contractor in solicitation, sales or service of such policies must hold a license as issued by the State or States in which the

§ 400.208

7 CFR Ch. IV (1-1-05 Edition)

policies are issued, which license authorizes the sales of insurance in any one or more of the following lines:

- (1) Multiple peril crop insurance;
- (2) Crop hail insurance;
- (3) Casualty insurance;
- (4) Property insurance;
- (5) Liability insurance; or
- (6) Fire insurance and allied lines.

The Contractor must submit evidence, satisfactory to the Corporation, verifying the type of State license held by each Representative and the date of expiration of each license.

(c) A Contractor's Representative must have achieved certification by the Corporation for each crop upon which the Representative sells and services insurance.

§ 400.208 Term of the contract.

(a) The term of the Contract shall commence on July 1 or when signed. The contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed. Any breach of the contract, or failure to comply with these Standards, by the Contractor, may result in termination of the contract by the Corporation upon written notice of termination to the Contractor. That termination will be effective thirty (30) days after mailing of the notice and termination to the Contractor.

(b) A Contractor who elects to continue under the Contract for a subsequent year must, prior to the month of June, submit a completed Plan of Operation which includes the Certifications as required by § 400.203 of this subpart. The Contractor may not perform under the contract until the Plan of Operation is approved by the Corporation.

§ 400.209 Electronic transmission and receiving system.

Any Contractor under the Contract is required to:

(a) Adopt a plan for the purpose of transmitting and receiving electronically, information to and from the Corporation concerning the original executed crop insurance documents;

(b) Maintain an electronic system which must be tested and approved by the Corporation;

(c) Maintain Corporation approval of the electronic system as a condition to the electronic transmission and reception of data by the Contractor;

(d) Utilize the Corporation approved automated data processing and electronic data transmission capabilities to process crop insurance documents as required herein; and

(e) Establish and maintain the electronic equipment and computer software program capability to:

(1) Receive and store actuarial data electronically via telecommunications utilizing 3780 protocol and utilizing a BELL 208B or compatible modem at 4800 bits per second (bps);

(2) Enter and store information from original crop insurance documents into electronic format;

(3) Verify electronically stored information recorded from crop insurance documents with electronically stored actuarial information;

(4) Compute and print the data elements in the Summary of Protection;

(5) Transmit crop insurance data electronically, via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps;

(6) Receive electronic acknowledgments, error messages, and other data via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps, and relate error messages to original crop insurance documents; and

(7) Store backup data and physical documents.

(The Corporation may approve other compatible specifications if accepted by the Corporation and if requested by the Contractor)

§ 400.210 [Reserved]

Subpart N [Reserved]

Subpart O—Non-Standard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 55 FR 32595, Aug. 10, 1990, unless otherwise noted.

§ 400.301 Basis, purpose, and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields or premium rates in conformance with the intent of section 508 of the Act (7 U.S.C. 1508). These regulations are applicable to all policies of insurance insured or reinsured by the Corporation under the Act and on those policies where the insurance coverage or indemnities are based on determinations applicable to the individual insured. These regulations will not be applicable to any policy where the amount of coverage or indemnities are based on the experience of the area.

[62 FR 22876, Apr. 28, 1997]

§ 400.302 Definitions.

Act—means Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

Actively engaged in farming means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

Actual Yield—means total harvested production of a crop divided by the number of acres on which the crop was planted. For insured acres, actual yield is the total production to count as defined in the insurance policy, divided by insured acres.

Assigned yield—means units of crop production per acre administratively assigned by the Corporation for the purpose of determining insurance coverage.

Corporation—means the Federal Crop Insurance Corporation.

Cumulative earned premium rate—is the total premium earned for all years in the base period, divided by the total liability for all years in the base period with the result expressed as a percentage.

Cumulative loss ratio—means the ratio of total indemnities to total earned premiums during the base period expressed as a decimal.

Earned premium means premium earned (both the amount subsidized and the amount paid by the producer, but excluding any amount of the subsidy attributed to the operating and administrative expenses of the insurance provider) for a crop under a policy insured or reinsured by the Corporation.

Earned premium rate—means premium earned divided by liability and expressed as a percentage.

Entity—means a person as defined in this subpart other than an individual.

Indemnified loss means a loss applicable for the policy for any year during the NCS base period for which the total indemnity exceeds the total earned premium. If the person has insurance for the crop in more than one county for any crop year, indemnities and premiums will be accumulated for all counties for each crop year to determine an indemnified loss.

Insurance experience means earned premiums, indemnities paid (but not including replant payments), and other data for the crop (after applicable adjustments), resulting from all of the insured's crop insurance policies insured or reinsured by the Corporation for one or more crop years and will include all information from all counties in which the person was insured.

Loss ratio—means the ratio of indemnity to earned premium expressed as a decimal.

NCS means nonstandard classification system.

NCS base period means the 10 consecutive crop years (as defined in the crop policy) ending 2 crop years prior to the crop year in which the NCS classification becomes effective for all crops, except those specified on the Special Provisions. For these excepted crops, the NCS base period means the 10 consecutive crop years ending 3 crop years prior to the crop year in which the NCS classification becomes effective. For example: An NCS classification effective for the 1996 crop year against a producer of citrus production in Arizona, California, and Texas, or sugarcane would have a NCS base period that includes the 1984 through 1993 crop years. An NCS classification effective for the 1996 crop year against a producer of all other crops would have a

§ 400.303

7 CFR Ch. IV (1–1–05 Edition)

NCS base period that includes the 1985 through 1994 crop years.

Person—means an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State or a political subdivision, or agency of a state.

Substantial beneficial interest—means an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests which are owned directly or indirectly through such means as ownership of shares in a corporation which owns the interest will be taken into consideration.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22876, Apr. 28, 1997]

§ 400.303 Initial selection criteria.

(a) Nonstandard classification procedures in this subpart initially apply when all of the following insurance experience criteria (including any applicable adjustment in § 400.303(d)) for the crop have been met:

(1) Three (3) or more indemnified losses during the NCS base period;

(2) Cumulative indemnities in the NCS base period that exceed cumulative premiums during the same period by at least \$500;

(3) The result of dividing the number of indemnified losses during the NCS base period by the number of years premium is earned for that period equals .30 or greater; and

(4) Either of the following apply:

(i) The natural logarithm of the cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater; or

(ii) Five (5) or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals or exceeds 1.50.

(b) The minimum standards provided in paragraphs (a) (2), (3), and (4) of this section may be increased in a specific county if that county's overall insurance experience for the crop is substantially different from the insurance experience for which the criteria was determined. The increased standard will apply until the conditions requiring the increase no longer apply. Any change in the standards will be con-

tained in the Special Provisions for the crop.

(c) Selection criteria may be applied on the basis of insurance experience of a person, insured acreage, or the combination of both.

(1) Insurance experience of a person will include:

(i) Insurance experience of the person;

(ii) Insurance experience of other insured entities in which the person had substantial beneficial interest if the person was actively engaged in farming of the insured crop by virtue of the person's interest in those insured entities;

(iii) Insurance experience of a spouse and minor children if the person is an individual and the spouse and minor children are considered the same as the individual under § 400.306.

(2) Insurance experience of insured acreage includes all insurance experience during the base period resulting from the production of the insured crop on the acreage.

(3) Where insurance experience is based on a combination of person and insured acreage, the insurance experience will include the experience of the person as defined in paragraph (b) of this section (1) only on the specific insured acreage during the base period.

(d) Insurance experience for the crop will be adjusted, by county and crop year, to discount the effect of indemnities caused by widespread adverse growing conditions. Adjustments are determined as follows:

(1) Determine the average yield for the county using the annual county crop yields for the previous 20 crop years, unless such data is not available;

(2) Determine the normal variability in the average yield for the county, expressed as the standard deviation;

(3) Subtract the result of § 400.303(d)(2) from § 400.303(d)(1);

(4) Divide the annual crop yield for the county for each crop year in the NCS base period by the result of § 400.303(d)(3), the result of which may not exceed 1.0;

(5) Subtract the result of § 400.303(d)(4) for each crop year from 1.0;

(6) Multiply the result of § 400.303(d)(5) by the liability for the crop year; and

(7) Subtract the result of § 400.303(d)(6) from any indemnity for that crop year.

(e) FCIC may substitute the crop yields of a comparable crop in determining § 400.303(d) (1) and (2), or may adjust the average yield or the measurement of normal variability for the county crop, or any combination thereof, to account for trends or unusual variations in production of the county crop or if the availability of yield and loss data for the county crop is limited. Information about how these determinations are made is available by submitting a request to the FCIC Regional Service Office for the producer's area. Alternate methods of determining the effects of adverse growing conditions on insurance experience may be implemented by FCIC if allowed in the Special Provisions.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22876, Apr. 28, 1997]

§ 400.304 Nonstandard Classification determinations.

(a) Nonstandard Classification determinations can affect a change in assigned yields, premium rates, or both from those otherwise prescribed by the insurance actuarial tables.

(b) Changes of assigned yields based on insurance experience of insured acreage (or of a person on specific insured acreage) will be based on the simple average of available actual yields from the insured acreage during the base period.

(c) Changes of assigned yields based on insurance experience of a person without regard to any specific insured acreage will be determined by an assigned yield factor calculated by multiplying excess loss cost ratio by loss frequency and subtracting that product from 1.00 where:

(1) Excess loss cost ratio is total indemnities divided by total liabilities for all years of insurance experience in the base period and the result of which is then reduced by the cumulative earned premium rate, expressed as a decimal, and

(2) Loss frequency is the number of crop years in which an indemnity was

paid divided by the number of crop years in which premiums were earned during the base period.

(d) Changes of premium rates will be made to reflect premium rates that would have resulted in insurance experience during the base period with a loss ratio of 1.00 but:

(1) A higher loss ratio than 1.00 may be used for premium rate determinations provided that the higher loss ratio is applied uniformly in a county; and

(2) If a Nonstandard Classification change has been made to current assigned yields, insurance experience during the base period will be adjusted to reflect the affects of changed assigned yields before changes of premium rates are calculated based on that experience.

(e) Once selection criteria have been met in any year, Nonstandard Classification adjustments will be made from year to year until no further changes are necessary in assigned yields or premium rates under the conditions set forth in § 400.304(f). In determining whether further changes are necessary, the eligibility criteria will be recomputed each subsequent year using the premium rates and yields which would have been applicable had this part not been in effect.

(f) Nonstandard Classification changes will not be made that:

(1) Increase assigned yields or decrease premium rates from those otherwise assigned by the actuarial tables, or

(2) Result in less than a 10 percent decrease in assigned yields or less than a 10 percent increase in premium rates from those otherwise assigned by the actuarial tables.

§ 400.305 Assignment of Nonstandard Classifications.

(a) Assignment of a Nonstandard Classification of assigned yields, assigned yield factors, or premium rates shall be made on forms approved by the Corporation and included in the actuarial tables for the county.

(b) Nonstandard classification assignment will be made each year, for the year identified on the assignment forms, and are not subject to change under the provisions of this subpart by

§ 400.306

7 CFR Ch. IV (1–1–05 Edition)

the Corporation for that year when included in the actuarial tables for the county, except as a result of a request for reconsideration as provided in section 400.309, or as the result of appeals under 7 CFR part 11.

(c) A nonstandard classification may be assigned to identified insurable acreage; a person; or to a combination of person and identified acreage for a crop or crop practice, type, variety, or crop option or amendment whereby:

(1) Classifications assigned to identified insurable acreage apply to all acres of the insured crop grown on the identified acreage;

(2) Classifications assigned to a person apply to all insurable acres of the insured crop on which the person and any entity in which the person has substantial beneficial interest is actively engaged in farming; and

(3) Classifications assigned to a combination of a person and identified insurable acreage will only apply to those acres of the insured crop grown on the identified acreage on which the named person is actively engaged in producing such crop.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22877, Apr. 28, 1997]

§ 400.306 Spouses and minor children.

(a) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation prior to their marriage will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse;

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and recordkeeping for the minor's farming operation.

(b) An individual shall be considered to be a minor until the age of 18 is reached. Court proceedings conferring majority on an individual under 18 years of age will not change such individual's status as a minor.

§ 400.307 Discontinuance of participation.

If the person has discontinued participation in the crop insurance program, the person will still be included on the NCS list in the county until the person has discontinued participation as a policyholder or a person with a substantial beneficial interest in a policyholder for at least 10 consecutive crop years. The most recent nonstandard classification assigned will be continued from year to year until participation has been renewed for at least one crop year and at least three years of insurance experience have occurred in the current base period. A nonstandard classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased.

[62 FR 22877, Apr. 28, 1997]

§ 400.308 Notice of Nonstandard Classification.

(a) The Corporation will give written notice to all persons to whom a Nonstandard Classification will be assigned. The notice will give the Nonstandard Classification and the person's rights and responsibilities according to this subpart.

(b) The person, upon receiving notice from the Corporation, will be responsible for giving notice of the Nonstandard Classification to any other person with an insurable interest affected by the classification. The person will give notice to any other affected person:

(1) Prior to the sales closing date if the other affected person has an established insurable interest at the time the classified person is notified by the Corporation; or

(2) Prior to the Classified person's establishing an insurable interest of another person that will be affected by the classification.

§ 400.309 Requests for reconsideration.

(a) Any person to be assigned a non-standard classification under this subpart will be notified of and allowed not less than 30 days from the date notice is received to request reconsideration before the nonstandard classification becomes effective. The request will be considered to have been made when received, in writing, by the Corporation.

(b) Upon receipt of a timely request for reconsideration from the person to whom the classification will be assigned, the Corporation will:

(1) Review all information supplied by, and respond to all questions raised by the individual, or

(2) In the absence of information and questions, review insurance experience and determinations for compliance with this subpart and report review results to the individual requesting reconsideration.

(c) Upon review of a request for reconsideration, the classification to be assigned will be corrected for:

(1) Errors and omissions in insurance experience;

(2) Incorrect calculations under procedures in this subpart, and

(3) Typographical errors.

(d) If the review finds no cause for change, the classification will be assigned and placed on file in the actuarial tables for the county.

(e) Any person not satisfied by a determination of the Corporation upon reconsideration may further appeal under the provisions of 7 CFR part 11.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22877, Apr. 28, 1997]

Subpart P—Preemption of State Laws and Regulations

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 55 FR 23069, June 6, 1990, unless otherwise noted.

§ 400.351 Basis and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7

U.S.C. 1501 *et seq.*) (the Act), to prescribe the procedures for Federal preemption of State laws and regulations not consistent with the purpose, intent, or authority of the Act. These regulations are applicable to all policies of insurance, insured or reinsured by the Corporation, contracts, agreements, or actions authorized by the Act and entered into or issued by FCIC.

§ 400.352 State and local laws and regulations preempted.

(a) No State or local governmental body or non-governmental body shall have the authority to promulgate rules or regulations, pass laws, or issue policies or decisions that directly or indirectly affect or govern agreements, contracts, or actions authorized by this part unless such authority is specifically authorized by this part or by the Corporation.

(b) The following is a non-inclusive list of examples of actions that State or local governmental entities or non-governmental entities are specifically prohibited from taking against the Corporation or any party that is acting pursuant to this part. Such entities may not:

(1) Impose or enforce liens, garnishments, or other similar actions against proceeds obtained, or payments issued in accordance with the Federal Crop Insurance Act, these regulations, or contracts or agreements entered into pursuant to these regulations;

(2) Tax premiums associated with policies issued hereunder;

(3) Exercise approval authority over policies issued;

(4) Levy fines, judgments, punitive damages, compensatory damages, or judgments for attorney fees or other costs against companies, employees of companies including agents and loss adjustors, or Federal employees arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations, or procedures issued by the Corporation (Nothing herein precludes such damages being imposed against the company if a determination is obtained from FCIC that the

§ 400.401

company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled); or

(5) Assess any tax, fee, or amount for the funding or maintenance of any State or local insolvency pool or other similar fund.

The preceding list does not limit the scope or meaning of paragraph (a) of this section.

[55 FR 23069, June 6, 1990, as amended at 69 FR 48730, Aug. 10, 2004]

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 57 FR 46297, Oct. 8, 1992, unless otherwise noted.

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Act to prescribe procedures for the collection, use, and confidentiality of Social Security Numbers (SSN) and Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of crop insurance policies issued by FCIC under the Act and sold and serviced by local FSA offices.

(2) All holders of crop insurance policies sold by insurance providers and all insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

(3) Any agent, general agent, or company, or any past or present officer, employee, contractor or subcontractor of such agent, general agent, or company under contract to FCIC or an insurance provider for loss adjustment or any other purpose related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, elected officials, contractors, and subcontractors of FCIC and FSA.

[57 FR 46297, Oct. 8, 1992, as amended at 62 FR 28608, May 27, 1997]

§ 400.402 Definitions.

Act—The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*).

Applicant—A person who has submitted an application for crop insurance coverage under the Act.

Authorized person—Any current or past officer, employee, elected official, general agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to administer the Act.

Disposition of records—The act of removing and disposing of records containing a participant's SSN or EIN by FCIC, or the insurance provider.

FCIC—The Federal Crop Insurance Corporation of the United States Department of Agriculture or any successor agency.

FSA—The Farm Service Agency of the United States Department of Agriculture, or a successor agency.

Insurance provider—A private insurance company approved by FCIC, or a local FSA office providing crop insurance coverage to producers participating in any program administered under the Act.

Past officers and employees—Any officer or employee of FCIC or the insurance provider who leaves the employ of FCIC or the insurance provider subsequent to the effective date of this rule.

Person—An individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a state, political subdivision, or an agency of a state.

Policyholder—An applicant whose application for insurance under the crop insurance program has been accepted by FCIC or the insurance provider.

Retrieval of records—Retrieval of a person's records by that person's SSN or EIN, or name.

Safeguards—Methods of security to be employed by FCIC or the insurance provider to protect a participant's SSN or EIN from unlawful disclosure and access.

7 CFR Ch. IV (1–1–05 Edition)

Storage—The secured storing of records kept by FCIC or the insurance provider on computer disks or drives, computer printouts, magnetic tape, index cards, microfiche, microfilm, etc.

Substantial beneficial interest—Any person having an interest of at least 10 percent in the applicant or policyholder.

System of records—Records established and maintained by FCIC or the insurance provider containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to multiple peril crop insurance policies as required by FCIC, from which information is retrieved by a personal identifier including, but not limited to the SSN, EIN, or name.

[62 FR 28608, May 27, 1997]

§ 400.403 Required system of records.

Insurance providers are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data before they accept or receive any applications for insurance. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by FCIC or the insurance provider.

[62 FR 28608, May 27, 1997]

§ 400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to FCIC or the insurance provider to be eligible for insurance. The SSN or EIN will be used by FCIC and the insurance provider in:

- (1) Determining the correct parties to the agreement or contract;
- (2) Collecting premiums or other amounts due FCIC or the insurance provider;
- (3) Determining the amount of indemnities;
- (4) Establishing actuarial data on an individual policyholder basis; and
- (5) Determining eligibility for crop insurance program participation or other United States Department of Agriculture benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application

and other forms where such SSN or EIN is required, FCIC or the reinsured company shall reject the application.

(c) The policyholder or applicant is required to provide to FCIC or the insurance provider, the name and SSN or EIN of any individual or other entity:

(1) holding or acquiring a substantial beneficial interest in such policyholder or applicant; or

(2) having any interest in the policyholder or applicant and receiving separate benefits under another United States Department of Agriculture program as a direct result of such interest.

(d) If a policyholder or applicant is using an EIN for a policy in an individual person's name, the SSN of the policyholder or applicant must also be provided.

[62 FR 28608, May 27, 1997]

§ 400.405 Agent and loss adjuster responsibilities.

(a) The agent or loss adjuster shall provide his or her correct SSN to FCIC or the insurance provider, whichever is applicable, to be eligible to participate in the crop insurance program. The SSN will be used by FCIC and the insurance provider in establishing a database for the purposes of:

- (1) Identifying agents and loss adjusters on an individual basis;
- (2) Evaluating agents and loss adjusters to determine level of performance;
- (3) Determining eligibility for program participation; and
- (4) Collection of any amount which may be owed by the agent and loss adjuster to the United States.

(b) If the loss adjuster contracting with FCIC to participate in the crop insurance program does not provide his or her correct SSN on forms or contracts where such SSN is required, the loss adjuster's contract will be cancelled effective on the date of refusal and the loss adjuster will be subject to suspension and debarment in accordance with the suspension and debarment regulations of the United States Department of Agriculture.

(c) If the agent or loss adjuster contracting with an insurance provider, who is also a private insurance company, to participate in the crop insurance program does not provide his or her correct SSN on forms or contracts

§ 400.406

where such SSN is required, the premium subsidy payable for administrative and operating expenses under the Standard Reinsurance Agreement, or any other reinsurance agreement, will not be paid on those policies lacking the correct SSN.

[62 FR 28609, May 27, 1997]

§ 400.406 Insurance provider responsibilities.

The insurance provider is required to collect and record the SSN or EIN on each application or on any other form required by FCIC.

[62 FR 28609, May 27, 1997]

§ 400.407 Restricted access.

The Manager, other officer, or employee of FCIC or an authorized person may have access to the SSNs and EINs obtained pursuant to this subpart, only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Act.

[62 FR 28609, May 27, 1997]

§ 400.408 Safeguards and storage.

Records must be maintained in secured storage with proper safeguards sufficient to enforce the restricted access provisions of this subpart.

[62 FR 28609, May 27, 1997]

§ 400.409 Unauthorized disclosure.

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)), and section 6109(f), Internal Revenue Code of 1986 (26 U.S.C. 6109(f) and the Privacy Act of 1974 (5 U.S.C. 552a). All records are confidential, and are not to be disclosed to unauthorized personnel.

[57 FR 46297, Oct. 8, 1992. Redesignated at 62 FR 28608, May 27, 1997]

§ 400.410 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person may subject that person, and the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various Federal statutes, including 26

7 CFR Ch. IV (1-1-05 Edition)

U.S.C. 7613, 5 U.S.C. 552a, and 42 U.S.C. 408.

[57 FR 46297, Oct. 8, 1992. Redesignated at 62 FR 28608, May 27, 1997]

§ 400.411 Obtaining personal records.

Policyholders, agents, and loss adjusters in the crop insurance program will be able to review and correct their records as provided by the Privacy Act. Records may be requested by:

(a) Mailing a signed written request to the headquarters office of FCIC; the FCIC Regional Service Office, or the insurance provider; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

[57 FR 46297, Oct. 8, 1992. Redesignated and amended at 62 FR 28608, 28609, May 27, 1997]

§ 400.412 Record retention.

(a) FCIC or the insurance provider will retain all records of policyholders for a period of not less than 3 years from the date of final action on a policy for the crop year, unless further maintenance of specific records is requested by FCIC. Final actions on insurance policies include conclusion of insurance events, such as the latest of termination of the policy, completion of loss adjustment, or satisfaction of claim.

(b) The statute of limitations for FCIC contract claims may permit litigation to be instituted after the period of record retention. Destruction of records prior to the expiration of the statute of limitations will not provide a defense to any action by FCIC against any private insurance company.

[62 FR 28609, May 27, 1997]

§ 400.413 [Reserved]

Subpart R—Sanctions

AUTHORITY: 7 U.S.C. 1506(l).

SOURCE: 58 FR 53110, Oct. 14, 1993, unless otherwise noted.

§ 400.451 General.

(a) The Federal Crop Insurance Corporation (FCIC) has implemented a system of sanctions to prevent waste,

fraud, and abuse within its programs and insurance delivery systems. Such sanctions include civil penalties and disqualification from the crop insurance program under the Federal Crop Insurance Act, 7 U.S.C. 1506(m); government wide debarment and suspension; and civil penalties and assessments under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801—31 U.S.C. 3812.

(b) The provisions of this subpart apply to all contracts and agreements to which FCIC is a party unless otherwise specifically provided for in this subpart, including those in which FCIC provides administrative expense reimbursement, premium subsidy, or reinsurance benefits.

(c) The provisions of this subpart are in addition to any other sanctions specifically provided in applicable contracts and agreements.

(d) This subpart is applicable to any act or omission by any affected party after October 14, 1993.

§ 400.452 Definitions.

For purposes of this subpart, a person means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a state, a political subdivision of a state, or any agency thereof.

§ 400.453 Exhaustion of administrative remedies.

All administrative remedies contained herein or incorporated herein by reference must be exhausted before Judicial Review in the United States Courts may be sought, unless review is specifically required by statute.

§ 400.454 Civil penalties.

(a) Any person who willfully and intentionally provides any materially false or inaccurate information to FCIC or to any approved insurance provider reinsured by FCIC with respect to an insurance plan or policy issued under the authority of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501 *et seq.*) may be subject to a civil fine of up to an amount specified in § 3.91(b)(7) of this title and disqualification from participation in:

(1) The catastrophic risk protection plan of insurance and the noninsured

crop disaster assistance program for a period not to exceed two (2) years; or

(2) Any plan of insurance providing protection in excess of that provided under the catastrophic risk protection plan of insurance for a period not to exceed ten (10) years.

(b) FCIC may make the payment of a civil penalty under this section a prior condition for the issuance, renewal, restoration, or continuing validity of any crop insurance policy or other approval.

(c) FCIC may compromise, modify, settle, collect, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section whenever it considers it to be appropriate or advisable.

(d) If a director, officer, or agent of a corporation provides false or inaccurate information, they may be separately subject to the fine specified in paragraph (a) of this section without regard to any penalties to which the corporation may be subject.

(e) The liability of any person for any penalty under this subpart or any related charges arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other statute or provision of law.

(f) Proceedings under this § 400.454 will be in accordance with subpart H of 7 CFR part 1, "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes," by which the Manager, FCIC, shall initiate proceedings by filing a complaint with the Hearing Clerk, United States Department of Agriculture.

[58 FR 53110, Oct. 14, 1993, as amended at 60 FR 37323, July 20, 1995; 62 FR 40928, July 31, 1997]

§ 400.455 Governmentwide debarment and suspension (procurement).

(a) This section prescribes the terms and conditions under which persons or business entities may be debarred or suspended by FCIC from contracting with the Federal government.

(b) This section is in accordance with 48 CFR part 9, subpart 9.4 and 48 CFR

§ 400.456

part 409, subpart 409.4 and shall be applicable to all FCIC debarment and suspension proceedings undertaken pursuant to the Federal Acquisition Regulations, except that the authority to debar or suspend is reserved to the Manager, FCIC, or the Manager's designee.

(c) Any individual or entity suspended or debarred under the provisions of 48 CFR part 9, subpart 9.4 will not be eligible to contract with FCIC or be employed by or contract with any insurance company that sells or adjusts FCIC's crop insurance contracts or which company's crop insurance contracts are reinsured by FCIC. FCIC may waive this provision if it is satisfied that the insurance company has taken sufficient action to insure that the suspended or debarred entity or individual will not be involved, in any way, with FCIC or FCIC reinsured crop insurance contracts.

§ 400.456 Governmentwide debarment and suspension (nonprocurement).

(a) This section prescribes the terms and conditions under which individuals or entities may be debarred or suspended by FCIC from participation in Federal assistance and benefits under Federal programs and activities.

(b) This section, in accordance with 7 CFR part 3017, shall be applicable to all FCIC debarment and suspension proceedings other than those undertaken pursuant to the Federal Acquisition Regulations.

(c) Proceedings under this section are not applicable to determinations of eligibility under the provisions of the crop insurance contracts or determinations to be made under 7 CFR 400.454.

(d) The Manager, FCIC, shall be the debarring and suspending official for all debarment or suspension proceedings undertaken by FCIC under the provisions of 7 CFR part 3017.

§ 400.457 Program Fraud Civil Remedies Act.

(a) This section is in accordance with the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-U.S.C. 3831) which provides for civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, ficti-

7 CFR Ch. IV (1-1-05 Edition)

tious, or fraudulent claims or written statements to Federal authorities or to their agents.

(b) Proceedings under this section will be in accordance with subpart L of 7 CFR part 1, "Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986."

(c) The Director, Appeals and Litigation Staff, FCIC, or the Director's designee, is authorized to serve as Agency Fraud Claims Officer for the purpose of implementing the requirements of this section.

§ 400.458 Scheme or device.

(a) In addition to the penalties specified in this part, if a person has knowingly adopted a material scheme or device to obtain catastrophic risk protection, other plans of insurance coverage, or noninsured assistance benefits to which the person is not entitled, has evaded the provisions of the Federal Crop Insurance Act, or has acted with the purpose of evading the provisions of the Federal Crop Insurance Act, the person shall be ineligible to receive any and all benefits applicable to any crop year for which the scheme or device was adopted.

(b) A scheme or device may include, but is not limited to, creating or using another entity, or concealing or providing false information with respect to your interest in the policyholder, to evade:

(1) Suspension, debarment, or disqualification from participation in the program;

(2) The assignment of the non-standard classification system; or

(3) Ineligibility for a delinquent debt owed to FCIC or the insurance company.

[60 FR 37324, July 20, 1995]

§ 400.459 Indebtedness.

Any person who owes a debt to FCIC, or an approved insurance provider, arising from any program administered under the Act, and that debt is delinquent, will be ineligible to participate in all such programs until the debt is paid in full or the person enters into an agreement, acceptable to FCIC or the approved insurance provider, to repay

the debt. If the person provides adequate evidence to demonstrate that the amount of debt is in dispute, the person's application will be accepted or their insurance will remain in effect, but no indemnity payment will be made, until the disputed issue is resolved between that person and FCIC or the approved insurance provider through the available appeal process.

[60 FR 51321, Oct. 2, 1995]

§§ 400.460–400.500 [Reserved]

Subpart S [Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42975, Aug. 20, 1996, unless otherwise noted.

§ 400.650 Purpose.

The Reform Act requires FCIC to implement a crop insurance program that offers several levels of insurance coverage for producers. These levels of protection include catastrophic risk protection, and additional coverage insurance. This subpart provides notice of the availability of these crop insurance options and establishes provisions and requirements for implementation of the insurance provisions of the Reform Act.

[61 FR 42975, Aug. 20, 1996, as amended at 68 FR 37721, June 25, 2003]

§ 400.651 Definitions.

Act. The Federal Crop Insurance Act, as amended (7 U.S.C. §§ 1501 *et seq.*).

Additional coverage. A level of coverage greater than catastrophic risk protection.

Administrative fee. An amount the producer must pay for catastrophic, and additional coverage each crop year on a per crop and county basis as specified in the Basic Provisions or the Catastrophic Risk Protection Endorsement.

Approved insurance provider. A private insurance company, including its agents, that has been approved and re-insured by FCIC to provide insurance

coverage to producers participating in the Federal crop insurance program.

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

Catastrophic risk protection. The minimum level of coverage offered by FCIC which is required before a person may qualify for certain other USDA program benefits unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop. For the 1995 through 1998 crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC. For the 1999 and subsequent crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Crop of economic significance. A crop that has either contributed in the previous crop year, or is expected to contribute in the current crop year, ten percent (10%) or more of the total expected value of the producer's share of all crops grown in the county. However, a crop will not be considered a crop of economic significance if the expected liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required for the crop.

Expected market price. (price election) The price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Insurable interest. The value of the producer's interest in the crop that is at risk from an insurable cause of loss during the insurance period. The maximum indemnity payable to the producer may not exceed the indemnity due on the producer's insurable interest at the time of loss.

Intended crop. A crop stated on the application as submitted on or before the sales closing date for the crop which the producer intended to plant in the crop year for which application is made.

Linkage requirement. The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with § 400.655, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a state or a political subdivision or agency of a state.

Reform Act. The Federal Crop Insurance Reform Act of 1994, Public Law 103-354.

Secretary. The Secretary of the United States Department of Agriculture.

Substitute crop. An alternative crop whose sales closing date has passed and

that is planted on acreage that is prevented from being planted to an intended crop or where an intended crop is planted and fails.

Zero acreage report. An acreage report filed by the producer that certifies that the producer does not have a share in the crop for that crop year.

[61 FR 42975, Aug. 20, 1996, as amended at 63 FR 40634, July 30, 1998; 64 FR 40742, July 28, 1999; 68 FR 37721, June 25, 2003]

§ 400.652 Insurance availability.

(a) If sufficient actuarial data are available, FCIC will offer catastrophic risk protection, and additional coverage plans of insurance to indemnify persons for FCIC insured or reinsured crop loss due to loss of yield or prevented planting, if the crop loss or prevented planting is due to an insured cause of loss specified in the applicable crop insurance policy.

(b) Catastrophic risk protection coverage may be offered through approved insurance providers and through local offices of the Farm Service Agency specified by the Secretary. Additional coverage will only be offered through approved insurance providers unless there is not a sufficient number of approved insurance providers that offer such insurance within a service area.

(c) A person must obtain at least catastrophic risk protection for the crop on all insurable acreage in the county in which the person has a share on or before the sales closing date designated by FCIC for the crop in the county in order to satisfy the linkage requirements unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(d) For additional coverage, in areas where insurance is not available for a particular agricultural commodity that is insurable elsewhere, FCIC may enter into a written agreement with a person to insure the commodity, provided that the person has actuarially sound data relating to the production of the commodity that is acceptable to FCIC and that such written agreement is specifically allowed by the crop insurance regulations applicable to the crop.

(e) Failure to comply with all provisions of the policy constitutes a breach

of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If a producer breaches the insurance contract, the execution of a waiver of eligibility for emergency crop loss assistance will not be effective for the crop year in which the breach occurred.

[61 FR 42975, Aug. 20, 1996, as amended at 68 FR 37721, June 25, 2003]

§ 400.653 Determining crops of economic significance.

To be eligible for certain other program benefits under § 400.655 the following conditions will apply with respect to crops of economic significance if the producer does not execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(a) If a producer planted a crop of economic significance in the preceding crop year, and does not intend to plant the same crop in the present crop year, the producer does not have to obtain insurance coverage or execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop in the present crop year to comply with the linkage requirements. However, if the producer later decides to plant that crop, the producer will be unable to obtain insurance after the sales closing date and must execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for benefits as specified in § 400.655. Failure to execute such a waiver will require the producer to refund any benefits already received under a program specified in § 400.655.

(b) The producer is initially responsible to determine the crops of economic significance in the county. The insurance provider may assist the producer in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop times the producer's share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer (in the county); and

(3) Divide the value of the specific crop by the result of paragraph (b)(2).

(c) The producer may use the type of price, such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that the producer uses the same type of price for all crops in the county.

(d) The producer may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

[61 FR 42975, Aug. 20, 1996, as amended at 64 FR 40742, July 28, 1999]

§ 400.654 Application and acreage report.

(a) To participate in catastrophic risk protection, or additional coverage plans of insurance, a producer must submit an application for insurance on or before the applicable sales closing date.

(b) In order to remain eligible for certain farm programs, as specified in § 400.655, a producer must obtain at least catastrophic risk protection on all crops of economic significance, if catastrophic risk protection is available in the county, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(c) Notwithstanding the requirements of § 400.654(a) that applications for insurance be submitted on or before the applicable sales closing date, FCIC may permit a producer to insure crops other than those specified on the application under the following conditions:

(1) The producer must be unable to plant the intended crop or it is not practical to replant a failed crop before the final planting date. FCIC will take into consideration marketing windows when determining whether it was not practical to replant.

(2) Conditions must exist to warrant allowing a producer to insure crops other than the intended crop.

(3) The producer must submit an application for the substitute crop on or before the acreage reporting date for the substitute crop and pay any applicable administrative fee. A producer

§ 400.655

may not substitute a crop that the producer planted in the preceding crop year unless that crop was listed on a timely filed application for the current crop year.

(4) If the producer plants a substitute crop that is a crop of economic significance, the producer must obtain CAT coverage, if available, to comply with the linkage requirements specified in § 400.655. The producer may not substitute a crop under this provision if the producer has signed or intends to sign a waiver for emergency crop loss assistance for the crop year.

(5) The substitute crop must be planted on or before the final planting date or within the late planting period, if applicable, for the substitute crop.

(6) Under no circumstances may a producer submit an application for additional coverage after the sales closing date for the substitute crop.

(d) For all coverages, including catastrophic risk protection, and additional coverages, the producer must file a signed acreage report on or before the acreage reporting date. Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or other legally sufficient document authorizing such person to sign.

(e) Under catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf an operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

[61 FR 42975, Aug. 20, 1996, as amended at 64 FR 40742, July 28, 1999; 68 FR 37721, June 25, 2003]

§ 400.655 Eligibility for other program benefits.

The producer must obtain at least catastrophic coverage for each crop of economic significance in the county in which the producer has an insurable

7 CFR Ch. IV (1–1–05 Edition)

share, if insurance is available in the county for the crop, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop, to be eligible for:

(a) Benefits under the Agricultural Market Transition Act;

(b) Loans or any other USDA provided farm credit, including: guaranteed and direct farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(c) Benefits under the Conservation Reserve Program derived from any new or amended application or contract executed after October 13, 1994.

[61 FR 42975, Aug. 20, 1996. Redesignated at 63 FR 40634, July 30, 1998]

§§ 400.656–400.657 [Reserved]

Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 62 FR 42042, Aug. 5, 1997, unless otherwise noted.

§ 400.675 Purpose.

This rule prescribes conditions under which a person may be determined to be ineligible to participate in any program administered by FCIC under the Federal Crop Insurance Act, as amended. This rule also establishes the criteria for reinstatement of eligibility.

§ 400.676 [Reserved]

§ 400.677 Definitions.

Act. The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*).

Actively engaged in farming. Means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

Applicant. A person who has submitted an application for crop insurance coverage under the Act.

Authorized person. Any current or past officer, employee, elected official,

general agent, agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to the Ineligible Tracking System to administer the Act.

CAT. The catastrophic risk protection plan of insurance.

Controlled substance. Any prohibited drug-producing plants including, but not limited to, cacti of the genus (*lophophora*), coca bushes (*erythroxylum coca*), marijuana (*cannabis sativa*), opium poppies (*papaver somniferum*), and other drug-producing plants, the planting and harvesting of which is prohibited by Federal or state law.

Debt. An amount of money which has been determined by an appropriate agency official to be owed, by any person, to FCIC or an insurance provider under any program administered under the Act based on evidence submitted by the insurance provider. The debt may have arisen from an overpayment, premium or administrative fee non-payment, interest, penalties, or other causes.

Debtor. A person who owes a debt and that debt is delinquent.

Delinquent debt. Any debt owed to FCIC or the insurance provider, that arises under any program administered under the authority of the Act, that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement or notification of indebtedness, or any overdue debt owed to FCIC or the insurance provider which is the subject of a scheduled installment payment agreement which the debtor has failed to satisfy under the terms of such agreement. Such debt may include any accrued interest, penalty, and administrative charges for which demand for repayment has been made, or unpaid premium including any accrued interest, penalty and administrative charges (7 CFR 400.116). A delinquent debt does not include debts discharged in bankruptcy and other debts which are legally barred from collection.

EIN. An Employer Identification Number as required under section 6109 of the Internal Revenue Code of 1986.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

FSA. The Farm Service Agency or a successor agency.

Ineligible person. A person who is denied participation in any program administered by FCIC under the Act.

Insurance provider. A reinsured company or FSA providing crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

Minor. Any person under 18 years of age. Court proceedings conferring majority on an individual under 18 years of age will result in such persons no longer being considered as a minor.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, political subdivision, or an agency of a State.

Policyholder. An applicant whose properly completed application for insurance under the crop insurance program has been accepted by FCIC or an insurance provider.

Reinsurance agreement. An agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

Reinsured company. A private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with FCIC, whose crop insurance policies are approved and reinsured by FCIC.

Scheduled installment payment agreement. An agreement between a person and FCIC or the insurance provider to satisfy financial obligations of the person under conditions which modify the terms of the original debt.

Settlement. An agreement between a person and FCIC or the insurance provider to resolve a dispute arising from a debt or other administrative determination.

SSN. An individual's Social Security Number as required under section 6109 of the Internal Revenue Code of 1986.

Standard Reinsurance Agreement (SRA). The primary reinsurance agreement between the reinsured company and FCIC.

§ 400.678

Substantial beneficial interest. An interest held by any person of at least 10 percent or more in the applicant or policyholder.

System of records. Records established and maintained by FCIC and FSA containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to Federal crop programs as required by FCIC, from which information is retrieved by a personal identifier including the SSN, EIN, name, or other unique identifier of a person.

[62 FR 42042, Aug. 5, 1997, as amended at 63 FR 40631, July 30, 1998]

§ 400.678 Applicability.

This subpart applies to any program administered by FCIC under the Act, including:

- (a) The catastrophic risk protection plan of insurance;
- (b) The limited and additional coverage plans of insurance as authorized under sections 508(c) and 508(m) of the Act; and
- (c) Private insurance products authorized under section 508(h) of the Act and reinsured by FCIC.

§ 400.679 Criteria for ineligibility.

Any person may be determined to be ineligible to participate in any program administered by FCIC under the authority of the Act, if the person meets one or more of the following criteria:

- (a) Has a delinquent debt on a crop insurance policy, issued or reinsured by FCIC, or any delinquent debt due FCIC under the Act. Any person with a delinquent debt owed to FCIC or to the insurance provider shall be ineligible to participate in any program administered under the authority of the Act. Such determinations will be in accordance with 7 CFR 400.459. The existence and delinquency of the debt must be verifiable.
- (b) Has violated the controlled substance (7 CFR part 718) provisions of the Food Security Act of 1985, as amended. Any person who violates the controlled substance provisions of the Food Security Act of 1985, as amended, shall be ineligible to participate in any program administered under the Act.

7 CFR Ch. IV (1–1–05 Edition)

(c) Has been disqualified under section 506(n) of the Act and 7 CFR part 400, subpart R. Any person who is disqualified in any administrative proceeding shall be ineligible to participate in any program administered under the Act. Ineligibility determinations resulting from administrative proceedings will not be stayed pending review. However, reversal of the determination will date back to the time of determination.

§ 400.680 Determination and notification of ineligibility.

(a) The insurance provider must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt. After the insurance provider has evaluated the person's response, if any, and determined that the debt is owed and delinquent, the insurance provider should submit the documentation establishing the existence and amount of the debt to FCIC, including any response by the person.

(b) If an insurance provider or any other authorized person has evidence that a person meets any other criteria set forth in § 400.679, they must submit the evidence to FCIC.

(c) After FCIC verifies that the person has met one or more of the criteria stated in § 400.679, FCIC will issue a Notice of Ineligibility and mail such notice to the person's last known address and to the insurance provider.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the persons right to an appeal of the ineligibility determination.

(e) Within 30 days of receiving the Notice of Ineligibility, any person receiving such a notice may appeal the determination of ineligibility to the National Appeals Division in accordance with 7 CFR part 11.

(f) If the person appeals the determination of ineligibility to the National Appeals Division, the insurance provider will be notified and provided with an opportunity to participate in

the proceeding if permitted by 7 CFR part 11.

§ 400.681 Effect of ineligibility.

(a) The period of ineligibility will be effective:

(1) For ineligibility as a result of a delinquent debt, the date the debt has been determined to be delinquent until the debt has been paid in full, discharged in bankruptcy, or the person has executed a scheduled installment payment agreement;

(2) For ineligibility as a result of a violation of the controlled substance provisions of the Food Security Act of 1985, at the beginning of the crop year in which the producer was convicted and the four subsequent consecutive crop years; and

(3) For ineligibility as a result of a disqualification under section 506(n) of the Act, the date that the Administrative Law Judge signs the order disqualifying the person until the period specified in the order of disqualification has expired.

(b) Once the person has been determined to be ineligible:

(1) All policies in which the ineligible person is the sole insured will be void for the period specified in § 400.681(a);

(2) If the ineligible person is a general partnership, all partners will be individually ineligible and any policy in which a partner has a 100 percent interest will be void for the period specified in § 400.681(a). The partnership and all partners will be removed from any policy in which they have a substantial beneficial interest, and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(3) If the applicant or policyholder is a corporation, partnership, or other business entity, and an ineligible person has a substantial beneficial interest in the applicant or policyholder, the application may be accepted or existing policies remain in effect, although the ineligible person will be removed from the policies and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(4) If the applicant or policyholder is a corporation, partnership, or other business entity that was created to

conceal the interest of a person in the farming operation or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or policyholder, the corporation, partnership or other business entity will be disregarded, the individual shareholders or partners will be personally responsible, and any shareholder or partner that is ineligible will be removed from the policy and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(5) Any indemnities or payments made on a voided policy, or on the portion of the policy reduced because of ineligibility, will be declared overpayments and must be repaid; and

(6) If the policy is voided, all producer paid premiums may be refunded, or if an ineligible person is removed from a policy, the portion of the producer paid premium commensurate with the ineligible person's share may be refunded, less a reasonable amount for expense and handling in accordance with 7 CFR 400.47.

(c) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse (Transfers of interest in a farming operation from one spouse to another will not be considered as a separate farming operation.);

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

§ 400.682

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and record keeping for the minor's farming operation.

§ 400.682 Criteria for reinstatement of eligibility.

A person who has been determined ineligible may have eligibility reinstated as follows:

(a) A delinquent debt owed on a crop insurance policy insured or reinsured by FCIC or any delinquent debt due FCIC. Eligibility may be reinstated after the debt is paid in full or discharged in bankruptcy, or the person has executed a scheduled installment payment agreement accepted by FCIC or the insurance provider. Eligibility may be reinstated as of the date the debt is paid, the date the agreement is accepted, or the date the debt is discharged in bankruptcy.

(b) Violations of the controlled substance provisions of the Food Security Act of 1985, as amended. Eligibility may be reinstated after the period of ineligibility stated in § 400.681 has expired.

(c) Disqualification under section 506(n) of the Act. Eligibility may be reinstated when the period of disqualification determined in the administrative proceedings has expired and payment of all penalties and overpayments have been completed.

(d) Timing of reinstatement of eligibility. After eligibility has been reinstated, the person must complete a new application for crop insurance coverage on or before the applicable sales closing date. If the date of reinstatement of eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year. If the National Appeals Division determines that the person should not have been placed on the Ineligible Tracking System, reinstatement will be effective at the beginning of the crop year for which the producer was listed on the Ineligible Tracking System and the person will be entitled to all applicable benefits under the policy.

7 CFR Ch. IV (1-1-05 Edition)

§ 400.683 Administration and maintenance.

(a) Ineligible producer data will be maintained in a system of records in accordance with the Privacy Act, 5 U.S.C. 552a.

(1) The Ineligible Tracking System is a record of all persons who have been determined to be ineligible for participation in any program pursuant to this subpart. This system contains identifying information of the ineligible person including, but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period for ineligibility.

(2) Information in the Ineligible Tracking System may be used by Federal agencies, FCIC employees, contractors, and reinsured companies and their personnel who require such information in the performance of their duties in connection with any program administered under the Act. The information may be furnished to other users including, but not limited to, FCIC contracted agencies; credit reporting agencies and collection agencies; in response to judicial orders in the course of litigation; and other users as may be appropriate or required by law or regulation. The individual information will be made available in the form of various reports and notices produced from the Ineligible Tracking System, based on valid requests.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement of eligibility will be maintained by FCIC and FSA, or its contractors, reinsured companies, and Federal and State agencies. This documentation will be maintained consistent with the electronic information contained within the Ineligible Tracking System.

(b) Information may be entered into the Ineligible Tracking System by FCIC or FSA personnel.

(c) All persons applying for or renewing crop insurance contracts issued or reinsured by FCIC will be subject to validation of their eligibility status against the Ineligible Tracking System. Applications or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 66 FR 47951, Sept. 17, 2001, unless otherwise noted.

§ 400.700 Basis, purpose, and applicability.

This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board under section 508(h) of the Act and for non-reinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development and maintenance costs for products and the approval process.

§ 400.701 Definitions.

Act. The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.)

Actuarial documents. The forms and associated materials applicable to a crop or insurance year, which are available for public inspection in an agent's office and FCIC's website at www.act.fcic.usda.gov. These materials show the insurable acreage or commodities, the applicable guarantees, coverage levels, premium rates, insurable cropping practices common to the area, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

Actuarially appropriate. Premium rates determined to cover the anticipated loss and a reasonable reserve based on valid reasoning, an examination of all known risk data, and founded on thorough knowledge or experience of the expected value of all future costs associated with a risk transfer.

Administrative and operating (A&O) subsidy. An amount for expenses associated with selling and servicing insurance products authorized by the Act and paid by FCIC on behalf of the producer to approved insurance providers.

Applicant. Any person or entity that submits a policy, provisions of a policy, or premium rates to the Board for approval under section 508(h) of the Act.

Approved insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Board. The Board of Directors of FCIC.

Complexity. Complexity takes into consideration such factors as originality, the number and type of factual determinations necessary to establish insurable interest, evaluate risk, and determine whether an indemnity is payable, the number of commodities and areas to which the product is applicable, the rating methodology, the number of risks covered, unique policy provisions or endorsements, the delivery process of the submission, and the process of creating rules, policy terms and conditions, underwriting procedures, rating methodologies, administrative and operating procedures, and supporting materials.

Development. The process of creating rules, methodologies, administrative and operating procedures, supporting materials, and documentation necessary to submit, gain approval, and implement a proposed policy or coverage.

Endorsement. A document appended to a policy reinsured under the Act that supplements or amends the insurance coverage of that policy.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

Maintenance. The process of continual support and improvement, as needed, for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, expanding into new commodities and areas, and other measures necessary to assure financial viability and actuarial soundness or to respond to statutory or regulatory changes.

Maintenance costs. Specific expenses associated with the maintenance of a policy during the maintenance period.

Maintenance period. A period of time that begins on the date the Board approves the submission for maintenance and ends on the date that is not more than four reinsurance years after such approval.

Manager. The Manager of FCIC.

Marketable. An evaluation by the Board of the marketing plan submitted by the applicant that determines that producers will purchase the product and approved insurance providers will sell the product based on credible evidence provided by the applicant.

Marketing plan. A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, and liability, the data upon which such information is based and a prescribed insurance year cycle.

Multiple peril crop insurance (MPCI). All insurance policies reinsured by FCIC that offers coverage for loss of production.

National Agricultural Statistics Service (NASS). An agency of the United States Department of Agriculture, or a successor agency.

Non-reinsured supplemental policy (NRS). A policy, endorsement or other risk management tool that is developed by an approved insurance provider, or an entity affiliated in some manner with an approved insurance provider, that offers coverage, other than for loss related to hail, for commodities in addition to coverage available under a policy or plan of insurance that is reinsured by FCIC. This policy, endorsement or other risk management tool has not been submitted under 508(h) for FCIC approval for reinsurance.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy. This includes any changes due to statutory or regulatory requirements.

Policy. A contract for insurance that includes an application, Basic Provisions, applicable commodity provisions, other applicable options and endorsements, the actuarial documents for the insured commodity, and related materials.

Plan of insurance. A class of policies, such as MPCI or Crop Revenue Coverage, that offer a specific type of cov-

erage to one or more agricultural commodities.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay anticipated losses and provide a reasonable reserve.

Related materials. The actuarial documents, special provisions, and any underwriting or loss adjustment manuals, handbooks, forms or other materials.

Research. The processes used to determine the need, producer interest, if the product is marketable, and feasibility of a proposed policy, plan of insurance or rate of premium.

Research and development costs. Specific expenses incurred and directly related to research and development of a submission approved by the Board.

Revenue insurance. Plans of insurance providing protection against loss of income or change in price.

Risk Management Agency (RMA). An agency of USDA responsible for the administration of all programs authorized under the Act and other authorities.

Risk subsidy. The portion of the approved premium paid by FCIC on behalf of the insured person.

Sales closing date. The final calendar date on which an approved insurance provider may accept an application by a producer for insurance.

Secretary. The Secretary of the United States Department of Agriculture.

Significant change. Any change to the policy or plan of insurance that may affect the rating and pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

Submission. A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of this subpart.

USDA. The United States Department of Agriculture.

User fees. Fees, approved by the Board, that can be charged to approved insurance providers for use of a policy or plan of insurance.

§ 400.702 Confidentiality of submission and duration of confidentiality.

(a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from the submission, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a submission, all information provided with the submission, or generated in the approval process, may be released to the public, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b).

(c) Any submission disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b) and no information related to such submission will be released by FCIC unless authorized in writing by the applicant.

§ 400.703 Timing of submission.

(a) A submission may only be provided to FCIC the first 5 business days of the months of, January, April, July, and October.

(b) Any submission not provided within the first 5 business days of a month stated in paragraph (a) of this section, will be considered to have been provided the next month stated in paragraph (a). For example, if an applicant provides a submission on the January 10, it will be considered to have been received on April 1.

(c) Any submission must be provided to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, not later than 180 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

§ 400.704 Type of submission.

(a) An applicant may submit to the Board in accordance with § 400.705:

(1) A policy or plan of insurance not currently reinsured by FCIC;

(2) One or more proposed revisions to a policy or plan of insurance authorized under the Act; or

(3) Rates of premium for any policy or plan of insurance authorized under the Act.

(b) An applicant must submit to the Board any significant change to a previously approved submission prior to making the change.

§ 400.705 Contents required for a new submission or changes to a previously approved submission.

A complete submission must contain the following material, as applicable, in the order given, in a 3-ring binder, with section dividers clearly labeling each section. The entire submission must be included in an electronic format acceptable to RMA. Six identical copies of each submission must be sent to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, and one identical copy of each submission provided to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, DC 20250-0801.

(a) The first section will contain general information, including, as applicable:

(1) The applicant's name, address or primary business location, phone number, and e-mail address;

(2) The type of submission (see § 400.704);

(3) A statement of whether the applicant is requesting:

(i) Reinsurance, which includes risk subsidy and A&O subsidy;

(ii) Costs for reimbursement for research and development; or

(iii) Estimated costs for reimbursement for maintenance.

(4) The proposed agricultural commodities, including types, varieties, and practices covered by the submission;

(5) The crop and reinsurance years in which the submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date;

(7) The proposed duration and scope of the plan of insurance;

(8) A marketing plan;

(9) Any known or anticipated future expansion plans;

(10) Identification, including names, addresses, telephone numbers, and e-mail addresses, of the persons responsible for:

(i) Addressing questions regarding the policy, underwriting rules and procedures, rate and price methodologies, data processing and record keeping requirements, and any other questions that may arise in administering the program after it is approved; and

(ii) Annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC.

(11) A statement whether the submission will be filed with the applicable office responsible for regulating insurance in each state proposed for insurance coverage, and, if not, reasons why the submission will not be filed for review.

(b) The second section must contain the benefits of the plan, including, as applicable, a statement about the plan that demonstrates:

(1) How the submission offers coverage or other benefits not currently available from existing public and private programs.

(2) The demand for the submission, which must be supported by information from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand; and

(3) How the submission meets public policy goals and objectives consistent with the Act and other laws, as well as policy goals supported by USDA and the Federal Government.

(c) The third section must contain the policy, including, as applicable:

(1) If the submission involves a new insurance policy or plan of insurance:

(i) All applicable policy provisions; and,

(ii) A list and description of any additional coverage that may be elected by

the insured, including how such coverage may be obtained.

(2) If the submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(d) The fourth section must contain the information related to the marketing of the policy or plan of insurance, including, as applicable:

(1) A list of states and counties where the submission is proposed to be offered;

(2) The amount of commodity (acres, head, board feet, etc.), the amount of production, and the value of each agricultural commodity proposed to be covered in each proposed county and state;

(3) The expected liability and premium for each proposed county and state;

(4) If available, any insurance experience for each year and in each proposed county and state in which the policy has been previously offered for sale including an evaluation of the policy's performance and, if data are available, a comparison with other similar insurance policies reinsured under the Act; and

(5) The projected frequency and severity of loss if the proposed submission is approved.

(e) The fifth section must contain the information related to the underwriting of the submission, including, as applicable:

(1) A sample of each document or form that will be used to present and sell the product;

(2) Detailed rules for determining insurance eligibility, including all producer reporting requirements;

(3) Relevant dates, if not included in the proposed policy;

(4) Detailed examples of the data and calculations needed to establish the insurance guarantee, liability, and premium per acre or other unit of measure, including worksheets that provide the calculations in sufficient detail and in the same order as presented in the policy to allow verification that the

premiums charged for the coverage are consistent with policy provisions;

(5) A detailed example of calculations used to determine a claim for indemnity for each unique situation in which a loss may be payable;

(6) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded; and

(7) Any statements to be included in the actuarial documents.

(f) The sixth section must contain the information related to prices and the rates of premium, including, as applicable:

(1) A list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;

(2) A detailed description of the pricing and rating methodologies, including supporting documentation, all mathematical formulas, equations, and data sources used in determining rates and prices and an explanation of premium components that detail how rates were determined for each component, that demonstrate the rate is appropriate;

(3) An example of a rate calculation and an example of a price calculation;

(4) A discussion of the reliability of the data; and

(5) An analysis of the results of simulations or modeling showing the performance of proposed rates and commodity prices, as applicable, based on one or more of the following (Such simulations must use all years of experience available to the applicant):

(i) A recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act with modifications, as needed, to represent the components of the submission;

(ii) A simulation based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or

(iii) Any other comparable simulation that provides results indicating both aggregate and individual performance of the submission under various

scenarios depicting good and poor actuarial experience.

(g) The seventh section must contain an evaluation and certification from an accredited associate or fellow of the Casualty Actuarial Society, or other similarly qualified professional, that certifies the submission is actuarially appropriate and consistent with appropriate insurance principles and practices.

(h) The eighth section must contain all forms applicable to the submission, including:

(1) An application for insurance and procedures for accepting the application; and

(2) All applicable policy forms, instructions and procedures that are necessary to establish the amounts of coverage or loss.

(i) The ninth section must contain the following:

(1) A statement agreeing that sales will be deferred until the next applicable sales closing date if policy information, forms, premium rates, prices, any automated premium calculator, and other related information or documents are not made available to all approved insurance providers:

(i) For a new submission, at least 60 days prior to the earliest sales closing date specified in the submission; or

(ii) For a revised submission, at least 60 days prior to the earliest contract change date specified in the submission;

(2) An explanation of any provision of the policy not authorized under the Act and identification of the portion of the rate of premium due to these provisions;

(3) Agent and loss adjuster training plans; and

(4) A certification from the applicant's legal counsel that the submission meets and complies with all requirements of the Act, applicable regulations, and any reinsurance agreement.

(j) The tenth section must contain the documents that demonstrate the submission complies in all respects with the standards established for processing and acceptance of data as specified in the FCIC Data Acceptance System Handbook (Manual 13), unless other arrangements have been made

§ 400.706

7 CFR Ch. IV (1–1–05 Edition)

with RMA. This handbook is available from the Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676 or on the FCIC web site (<http://www.rma.usda.gov/data/#m13>).

(k) The eleventh section must contain the information related to a request for reimbursement of research and development costs, and maintenance costs, as applicable, in accordance with § 400.712.

(l) The twelfth section must contain executed certification statements in accordance with the following:

(1) “{Applicant’s Name} hereby claim that the amounts set forth in this section and § 400.712 are correct and due and owing to {Applicant’s Name} by FCIC under the Federal Crop Insurance Act.”

(2) “{Applicant Name} understands that, in addition to criminal fines and imprisonment, the submission of false or fraudulent statements or claims may result in civil and administrative sanctions.”

§ 400.706 Review of submission.

(a) Prior to providing any submission, including a new submission, a re-submission, or a change to a previously approved submission, to the Board for its review, RMA will:

(1) Review the submission for completeness to determine if all necessary and appropriate documentation is included in accordance with § 400.705;

(2) Review the submission to determine whether the documentation is of a level of quality to conduct a meaningful review by the Board;

(3) If the submission is determined to be complete and the documentation of sufficient quality to permit a meaningful review, the submission will be considered to have been submitted to the Board for approval or disapproval. The date that FCIC determines that the submission is complete, as notified to the applicant, will be the date that the time frame for approval or disapproval by the Board begins;

(4) Return to the applicant any submission lacking any of the information required in § 400.705, or with documentation that is of insufficient quality to permit a meaningful review (such submission will not be considered

as provided to the Board for the purpose of commencing the period by which the submission must be approved or disapproved by the Board. If the submission is resubmitted, it will be considered a new submission.);

(b) When FCIC determines that the submission is complete and the documentation of sufficient quality to permit a meaningful review, it will forward the submission to the Board for consideration for approval or disapproval.

(c) During the consideration process, the Board will:

(1) For all new submissions or significant changes to previously approved submissions, contract with five independent persons with underwriting or actuarial experience to review the submission:

(i) Of the five reviewers, no more than one will be employed by the Federal Government, and none may be employed by any approved insurance provider or their representatives; and

(ii) The reviewers will each provide their assessment of whether the submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, follows sound, reasonable, and appropriate underwriting principles, as well as other items the Board may deem necessary;

(2) For all submissions:

(i) Request review by FCIC to determine whether the submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, is consistent with USDA’s public policy goals, does not increase or shift risk to any other FCIC reinsured policy, can be administered and delivered efficiently and effectively, and meets the standards pursuant to § 400.712 for reimbursement of research and development costs and maintenance costs, if requested, and determine whether the requested amount of government reinsurance, risk subsidy, and administrative and operating subsidies is reasonable and appropriate for the type of

coverage provided by the policy submission; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine whether the interests of producers are adequately protected and if the submission conforms to the requirements of the Act.

(3) Render a decision to approve or give notice of an intent to disapprove within 90 days after the date the submission is considered submitted to the Board in accordance with paragraph (a)(3) of this section, unless the applicant and Board agree to a time delay in accordance with paragraph (h) of this section.

(d) All comments and evaluations will be forwarded to the Board by a date determined to allow the Board adequate time for review.

(e) The Board will consider all comments, evaluations, and recommendations in its review process. Prior to making a decision, the Board may request additional information from RMA, OGC, the independent reviewers, or the applicant.

(f) The Board may disapprove a submission if it determines that:

(1) The interests of producers are not protected;

(2) The premium rates are not actuarially appropriate;

(3) The submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the submission are excessive; or

(5) There is insufficient time before the submission would become effective under section 508(h) of the Act for the Board to make an informed decision with respect to whether the interests of producers are protected, the premium rates are actuarially appropriate, or the risks associated with the submission are excessive.

(g) If the Board intends to disapprove the submission, the applicant will be notified in writing at least 30 days prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.

(h) An applicant may request, at any time, a time delay before the Board provides a notice of intent to disapprove the submission. The Board is

not required to agree to such an extension.

(1) The applicant understands that any requested time delay will not be limited in the length time or the number of delays. However, delays may make implementation of the submission for the targeted crop year impractical or impossible.

(2) The time period during which the Board must make a decision to approve or disapprove the submission is not in effect during any time delay requested by the applicant.

(3) The Board and the applicant must agree to a time period in which the Board must make its decision to approve or disapprove after the expiration of any requested time delay.

(i) The applicant may withdraw a submission at any time by written request to the Board. A withdrawn submission that is resubmitted will result in the submission being deemed a new submission for the purposes of determining the amount of time that the Board must act on such submission.

(j) Prior to any Board action taken or after the Board has provided formal notice of its intent to disapprove all or part of a submission:

(1) Modification can occur in writing or orally prior to the Board providing notice of its intent to disapprove all or part of a submission.

(2) After formal notice of intent to disapprove all or part of a submission has been provided by the Board, the applicant must provide written to the Board that the submission will be modified not later than 30 days after the Board provided such notice. Except as provided in paragraph (j)(5) of this section, the applicant must also include the date that the modification will be provided to the Board.

(3) If the modification is in direct response to reviewer comments, the Board may act on the modification immediately or seek further review within the 30 day time period allowed.

(4) The Board will approve or disapprove a modified submission not later than 30 days after receiving a modified submission from the applicant, unless the applicant and the Board agree to a time delay. If a time delay is agreed upon the time period during which the Board must act on

§ 400.707

the modified submission will not be in effect during the delay.

(5) The Board will disapprove a modified submission if:

(i) All causes for disapproval stated by the Board in its notification of its intent to disapprove the submission are not satisfactorily addressed;

(ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or

(iii) If modification is so substantial that the Board determines that additional independent review is required and a time delay can not be agreed to allow for such review.

(k) When the applicant is notified of the Board's intent to disapprove and the submission is not revised or withdrawn, the Board will provide written notification to the applicant that the submission has been disapproved no less than 30 days after the date that the notice of intent to disapprove was provided to the applicant.

(l) If the Board fails to take action on a new submission within the prescribed 90 day period in paragraph (c)(3) of this section, or within the time period in accordance with paragraph (h)(3) of this section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for any subsequent reinsurance year.

§ 400.707 Presentation to the Board for approval or disapproval.

(a) The Board will inform the applicant of the date, time, and place of the Board meeting.

(b) The applicant will be given the opportunity and is encouraged to present the submission to the Board in person. The applicant must confirm, in writing, whether the applicant will present the submission to the Board.

(c) If the applicant elects, at any time, not to present the submission to the Board, the Board will make its decision based on the submission and the reviews provided in accordance with § 400.706(c).

7 CFR Ch. IV (1–1–05 Edition)

§ 400.708 Approved submission.

(a) After a submission is approved by the Board, and prior to it being made available for sale to producers, the following items, as applicable, must be completed:

(1) If the Board requires, an agreement between the applicant and FCIC that specifies the responsibilities of each with respect to the implementation, delivery and oversight of the submission, including the disposition of property rights for the policy; and

(2) A reinsurance agreement if terms and conditions differ from the Standard Reinsurance Agreement.

(b) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance and subsidy terms and conditions as received by the applicant.

(c) Any solicitation, sales, marketing, or advertising of the approved submission by the applicant before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected.

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, and supporting materials, including actuarial materials, are submitted to FCIC in the form approved by the Board;

(ii) Except as provided in § 400.712(k)(2), annually updating and providing maintenance changes no later than 180 days prior to the earliest sales closing date for the commodity in all counties or states in which the policy or plan of insurance is sold and;

(iii) Addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions will be communicated to all approved insurance providers through FCIC's official issuance system.);

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by

the Board (Any changes, both non-significant and significant, must be submitted to FCIC no later than 180 days prior to the earliest sales closing date for the commodity in all counties or states in which the policy or plan of insurance is sold. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new submission.);

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC in accordance with § 400.712(k)(2), the applicant remains liable for any mistakes, errors, or flaws that occurred prior to the transfer of the policy or plan of insurance;

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered not less than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider, or any other person will have a right of action against the applicant; and

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been timely withdrawn are deemed canceled and applications for insurance are not accepted as of the date that FCIC publishes the notice of withdrawal on its website at www.act.fcic.usda.gov. Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in their

area by the sales closing date for such policy or plan of insurance.

(6) Failure of the applicant to perform the applicant's responsibilities may result in the denial of reinsurance for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related materials, for sale to producers in a timely manner (All such information shall be communicated to all approved insurance providers through FCIC's official issuance system.);

(ii) Ensuring that all approved insurance providers receive reinsurance under the same terms and conditions as the applicant (approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement) if required;

(iii) Conducting the best review of the submission possible in the time allowed; and

(iv) Reviewing the activities of approved insurance providers, agents, loss adjusters, and producers to ensure that they are in accordance with the terms of the policy or plan of insurance, the reinsurance agreement, and all applicable procedures;

(2) FCIC will not be liable for any mistakes, errors, or flaws in the policy, plan of insurance, their related materials, or the rates of premium and no cause of action will exist against FCIC as a result of such mistake, error, or flaw in a submission submitted under this subpart;

(3) If at any time prior to the cancellation or termination date, FCIC discovers that there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium that results in over or under insurance, FCIC will deny reinsurance to such policy or plan of insurance;

(4) If reinsurance is denied under paragraph (b)(3) of this section, the approved insurance provider will have the option of:

(i) Selling and servicing the policy or plan of insurance at its own risk and without any subsidy; or

§ 400.710

7 CFR Ch. IV (1–1–05 Edition)

(ii) Canceling the policy or plan of insurance in accordance with its terms; and

(5) If the applicant transfers the policy or plan of insurance to FCIC in accordance with § 400.712 (k)(2), FCIC will assume the liability for any mistakes, errors, or flaws that occur after the policy or plan insurance as been transferred and FCIC is in control of maintenance.

§ 400.710 Preemption and premium taxation.

A policy or plan of insurance that is approved by the Board for FCIC reinsurance is preempted from state and local taxation.

§ 400.711 Right of review, modification, and the withdrawal of reinsurance.

At any time after approval, the Board may review any policy, plan of insurance, related materials, and rates of premium approved under this subpart and request additional information to determine whether the policy, plan of insurance, related materials, and rates of premium comply with statutory or regulatory changes or court orders, are still actuarially appropriate, and protect program integrity and the interests of producers. The Board will notify the applicant of any problem or issue that may arise and allow the applicant an opportunity to make any needed change. The Board may deny reinsurance for the applicable policy, plan of insurance or rate of premium if:

(a) The applicant fails to perform their responsibilities under § 400.709; or

(b) If the applicant does not satisfactorily provide materials or resolve any issue so that necessary changes can be made prior to the earliest contract change date.

§ 400.712 Research and development reimbursement, maintenance reimbursement, and user fees.

(a) Submissions approved by the Board for reinsurance under section 508(h) of the Act may be eligible for a one time payment of research and development costs and maintenance costs for up to four reinsurance years, as determined by the Board after the date

such costs have been approved by the Board. Reimbursements made under this section will be considered as payment in full for research, development, and maintenance, as applicable, for any policy or plan of insurance and any property rights to the policy or plan of insurance.

(b) For submissions submitted to the Board for reinsurance after publication of this subpart, an estimate of a request for reimbursement of research and development costs and maintenance costs, as applicable, must be included with the original submission to the Board in accordance with this section. These estimates will only be used by FCIC for the purpose of tracking potential expenditures and will not provided a basis for making any reimbursements under this section. Documentation of actual costs allowed under this section will be used to determine any reimbursement.

(c) For a submission approved by the Board, or submitted to the Board, prior to publication of this subpart, a request for reimbursement for research and development costs and estimated maintenance costs must be received within 60 days following publication of this subpart or approval of the submission by the Board. This request should be sent to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, and also provide one identical copy of each submission to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, D.C. 20250-0801.

(d) To be eligible for any reimbursement under this section, FCIC must determine that a submission is marketable.

(e) To be considered for reimbursement in any fiscal year, complete and final requests for research and development costs and maintenance costs, as applicable, must be received by FCIC not later than August 1. For 2001 fiscal year only, FCIC may consider reimbursement for research and development costs on approved submissions for any request received by September 1,

2001. Given the limitation on funds, regardless of when the request is received, no payment will be made prior to September 15 of the applicable fiscal year.

(f) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (g), (h), (i), (j), and (l) of this section, if all applicants' requests for reimbursement of research and development costs and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement authorized under these subsections.

(2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (g), (h), (i), (j), and (l) by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (g), (h), (i), (j), and (l) for that year and multiplying the result by the amount of reimbursement authorized under the Act.

(g) The amount of reimbursement for research and development costs and maintenance costs, as applicable, will be determined based on the amount of reimbursement authorized under paragraph (f) of this section, adjusted for the complexity of the policy, plan of insurance, or rates of premium, as determined by FCIC, and the size of the area in which the policy, plan of insurance, or rates of premium may be offered.

(1) Policies or plans of insurance that offer new and innovative coverages that are not currently available will be eligible for a higher reimbursement than policies or plans of insurance that are, or have components that are, based on existing policies or plans of insurance.

(2) Policies or plans of insurance that offer new premium rating or market price methodologies will be eligible for a higher reimbursement than policies or plans of insurance that use existing premium rating or market price methodologies.

(3) Policies or plans of insurance that cover new commodities that are not otherwise covered by crop insurance or that offer innovative coverage and original policy language will be eligible for a higher reimbursement than policies or plans of insurance for commodities for which insurance is currently available.

(4) Policies or plans of insurance that may be offered for sale nationwide or in large geographical regions will be eligible for higher reimbursement than those that are applicable to only a few counties or states or a small geographical region.

(5) Any reimbursement under this subpart will be scored as follows:

(i) Complexity scores:

(A) Basic or Common Provisions:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (g)(3) of this section): 0.20

(B) Crop Provisions and Special Provisions:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (g)(3) of this section): 0.20

(C) Market prices:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (g)(3) of this section): 0.20

(D) Rates of Premium:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (g)(3) of this section): 0.20

(E) Underwriting:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (g)(3) of this section): 0.20

(ii) Geographic scope scores:

(A) Potential national availability: 0.10

(B) Potential regional, state or county availability: 0.05

(6) In accordance with paragraph (e) of this section, those policies or plans of insurance that receive a summed total score for both complexity and geographic scope that is:

(i) Equal to or greater than 0.6 may receive the full amount of reimbursement approved by the Board under paragraphs (h), (i) or (j) of this section;

(ii) Greater than 0.25 but lower than 0.60 will receive a reimbursement that is not greater than 75 percent of the full amount of reimbursement approved by the Board under paragraphs (h), (i) or (j) of this section; and

(iii) Equal to or less than 0.25 will receive a reimbursement that is not greater than 50 percent of the full amount of reimbursement approved by the Board under paragraphs (h), (i) or (j) of this section.

(h) For those submissions that were approved by the Board prior to the date of publication of this subpart, reimbursement for research and development costs will be determined in accordance with paragraph (i) of this section or by multiplying the average number of policies earning premium each crop year since inception of the policy or plan of insurance by \$7.00 and multiplying the result by the complexity and scope score from paragraph (g) of this section.

(i) For those submissions submitted to the Board prior to the date of publication of this subpart but not yet approved, or submitted to the Board for approval after the date of publication of this part, research and development costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.). Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items (directly related to research and development of the submission only) may include the following:

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total

dollars. Compensation amounts will be compared with the Occupational Employment Statistics Survey, published each January by the U.S. Department of Labor, Bureau of Labor Statistics);

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics.);

(iii) Contracted expenses (include a copy of the contract, billing statements, accounting records, etc.);

(iv) Professional fees (include the job title, straight-time hourly wage, total hours, and total dollars);

(v) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(vi) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost. Software developed to calculate premiums or losses, or development of software to send or receive data between the producer, agent, approved insurance provider or RMA or such other similar software may not be included as an allowable cost.);

(vii) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars);

(2) The following expenses are specifically not eligible for research and development cost reimbursement:

- (i) Copyright or patent fees;
- (ii) Training costs;
- (iii) State filing fees and expenses;
- (iv) Normal ongoing administrative expenses;
- (v) Paid or incurred losses;
- (vi) Loss adjustment expenses;
- (vii) Sales commission;
- (viii) Marketing costs;
- (ix) Indirect overhead costs;
- (x) Lobbying costs;

(xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;

(xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;

(xiii) Costs of making program changes as a result of case or statutory law effecting the policy; and

(xiv) Maintenance costs associated with the submission.

(j) Requests for reimbursement of maintenance costs for submissions approved after publication of this subpart must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period. For submissions approved prior to publication of this subpart, the applicant may provide itemized statements and supporting documentary evidence or may request to receive not more than 15 percent of the amount of reimbursement for research and development costs, as determined in accordance with §400.712, for the first reinsurance year in the maintenance period. For all subsequent reinsurance years, itemized and supporting documentary evidence must be provided. Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Maintenance costs for the following activities may be reimbursed:

(i) Expansion of the original submission to cover additional commodities;

(ii) Expansion of the original submission into additional counties or states;

(iii) Reasonable and required modifications to the policy and any related materials;

(iv) Adjustment to premium rates and commodity prices as necessary or required; and

(v) Other costs associated with maintaining the policy, as determined by the Board.

(2) [Reserved]

(k) Not later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, the applicant must notify FCIC regarding its election of the treatment of the

policy or plan of insurance for subsequent reinsurance years.

(1) The applicant must notify FCIC whether it intends to:

(i) Continue to maintain the policy or plan of insurance and charge a user fee, as approved by the Board, to approved insurance providers for all policies earning premium to cover maintenance expenses. It is the sole responsibility of the applicant to collect such fees from the approved insurance providers and any indebtedness for such fees must be resolved by the applicant and approved insurance provider. Applicants may request that FCIC provide the number of policies sold by each approved insurance provider. Such information will be provided not later than 90 days after such request is made or not later than 90 days after the requisite information has been provided to FCIC by the approved insurance provider, whichever is later; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) If the applicant elects to:

(i) Transfer the policy or plan of insurance to FCIC, FCIC may, at its sole discretion, elect to withdraw the availability of the policy or plan of insurance or continue to maintain the policy or plan of insurance; or

(ii) Continue to maintain the policy or plan of insurance, at the time of the election, the applicant must submit a request for approval of the user fee by the Board.

(3) Requests for approval of the user fee must be accompanied by written documentation to support that the amount requested will only cover maintenance costs.

(4) The Board will approve the amount of user fee that is payable to the applicant by approved insurance providers unless the Board determines that the user fee charged:

(i) Is unreasonable in relation to the maintenance costs associated with the policy or plan of insurance; or

(ii) Unnecessarily inhibits the use of the policy or plan of insurance by other approved insurance providers.

(5) Reasonableness of the user fees will be determined by the Board based

§ 400.713

on a comparison with the amount of reimbursement for maintenance previously received, the number of policies, the number of approved insurance providers, and the expected total amount of user fees to be received in any reinsurance year.

(6) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other approved insurance providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.

(7) The user fee charged to each approved insurance provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(l) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research, development, or maintenance costs under this section or the amount of reimbursement.

(m) For purposes of this section, rights to, or obligations of, research and development reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

§ 400.713 Non-Reinsured supplemental (NRS) policy.

(a) The reinsured company must submit three copies of the new or revised NRS policy and related materials to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676 for review, approval or disapproval at least 90 days prior to the first sales closing date applicable to the policy reinsured by FCIC.

(b) FCIC will approve the NRS policy if it does not increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, affect any rights of the insured with respect to

7 CFR Ch. IV (1-1-05 Edition)

the underlying reinsured policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC. Marketplace disruption includes adversely affecting sales or administration of the underlying reinsured policy, undermining producers' confidence in the Federal crop insurance program, decreasing the producer's willingness or ability to use Federally reinsured risk management products, or harming public perception of the Federal crop insurance program.

(c) Failure to timely submit the NRS policy to FCIC will result in the denial of reinsurance and subsidy for all policies reinsured by FCIC for which the insured has obtained the NRS policy.

Subpart W [Reserved]

Subpart X—Interpretations of Statutory and Regulatory Provisions

SOURCE: 63 FR 70313, Dec. 21, 1998, unless otherwise noted.

§ 400.765 Basis and applicability.

(a) The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination of the interpretation of any provision of the Act or the regulations promulgated thereunder.

(b) Requesters may seek interpretations of those provisions of the Act and the regulations promulgated thereunder that are in effect for the crop year in which the request under this subpart is being made and the three previous crop years.

(c) All final agency determinations issued by FCIC, and published in accordance with § 400.768(f), will be binding on all participants in the Federal crop insurance program.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.766 Definitions.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.*

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Participant. Any applicant for crop insurance, a producer with a valid crop insurance policy, or a private insurance company with a reinsurance agreement with FCIC or their agents, loss adjusters, employees or contractors.

Regulations. All provisions contained in 7 CFR chapter IV.

§ 400.767 Requester obligations.

(a) All requests for a final agency determination under this subpart must:

(1) Be submitted, in writing by certified mail to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW., Washington, DC 20250-0801, facsimile at (202) 690-5879 or by electronic mail at RMA533@wdc.fsa.usda.gov;

(2) State that it is being submitted under section 506(s) of the Act;

(3) Identify and quote the specific provision in the Act or regulations for which a final agency determination is requested;

(4) State the crop year for which the interpretation is sought;

(5) State the name, address, and telephone number of a contact person affiliated with the request; and

(6) Contain the requester's detailed interpretation of the regulation.

(b) The requestor must advise FCIC if the request for a final agency determination will be used in a lawsuit or the settlement of a claim.

(c) Each request for final agency determination under this subpart must contain no more than one request for an agency interpretation.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.768 FCIC obligations.

(a) FCIC will not interpret any specific factual situation or case, such as actions of any participant under the terms of a policy or any reinsurance agreement.

(b) If, in the sole judgement of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide an interpretation, but will notify the requester that the request is unclear, ambiguous or incomplete, within 30 days of such request.

(c) FCIC will provide a final determination of the interpretation to a request that meets all the conditions stated herein to the requester in writing, and at FCIC's discretion in the format in which it was received, within 90 days of the date of receipt by FCIC.

(d) If a requestor is notified that a request is unclear, ambiguous or incomplete under section 400.768(b), the time to respond will be tolled from the date FCIC notifies the requestor until the date that FCIC receives a clear, complete, and unambiguous request.

(e) If a response is not provided within 90 days, the requestor may assume the interpretation provided is correct for the applicable crop year.

(f) All agency final determinations will be published by FCIC as specially numbered documents on the RMA Internet website.

(g) All final agency determinations are considered matters of general applicability that are not appealable to the National Appeals Division. Before obtaining judicial review of any final agency determination, the person must obtain an administratively final determination from the Director of the National Appeals division on the issue of whether the final agency determination is a matter of general applicability.

PART 401 [RESERVED]

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

Sec.

402.1 General statement.

402.2 Applicability.

402.3 OMB control numbers.

402.4 Catastrophic Risk Protection Endorsement Provisions.

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42985, Aug. 20, 1996, unless otherwise noted.

§ 402.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect